UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

EDDISONS FACILITY SERVICES LLC

and Case 18-CA-089191

TEAMSTERS LOCAL No. 120

MODERN INDUSTRIAL SERVICES, INC

and Case 18-CA-089194

TEAMSTERS LOCAL No. 120

ISG INDUSTRIAL STAFFING GROUP, INC

and Case 18-CA-089401

TEAMSTERS LOCAL No. 120

Florence I. Brammer Esq. and Rachel Simon-Miller, Esq. for the Acting General Counsel.

DECISION

STATEMENT OF THE CASE

Eric M. Fine, Administrative Law Judge. This case was tried in Minneapolis, Minnesota on June 18 and 19, 2013. The charges were filed by Teamsters Local No. 120 (the Union) against Eddisons Facility Services LLC (Eddisons); Modern Industrial Services, Inc. (Modern); and ISG Industrial Staffing Group, Inc. (ISG), collectively referred to as Respondents. The consolidated complaint, issued on November 6, 2012, alleges: Eddisons and Modern are agents of each other and joint employers of the employees of Modern; and that Modern and ISG constitute a single-integrated business enterprise and are a single employer, and in the alternative are agents of each other. The consolidated complaint alleges Respondents have violated Section 8(a)(1) of the Act by: telling applicants that Modern could not hire any employees of GCA Production Services, Inc. (GCA); returning the application of a former GCA employee and indicating on the application that the employee had been the principal supporter of the Union; physically removing applicants for employment from the room where applications were being taken

¹ All dates are 2012 unless otherwise stated.

because of their union or other protected concerted activities; telling an employee the employee's offer of employment had been rescinded; telling an applicant who had been seeking part time employment that only full-time positions were available; and interrogating an applicant all because of employees union or other protected concerted activities. The consolidated complaint also alleges Respondents have violated Section 8(a)(1) and (3) of the Act by Modern's refusing to employ numerous named employees who were previously employed by GCA, with the exception of an unknown number of off-site drivers, because the employees assisted the Union, engaged in union or other concerted protected activities, and to discourage employees from engaging in those activities.

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On the entire record, including my observation of the witnesses' demeanor, and after considering the brief filed by the Acting General Counsel, I make the following:²

Findings of Fact

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I. JURISDICTION

Respondent Eddisons is the only one of the three Respondents to have filed an answer to the consolidated complaint. Eddisons admits it is a limited liability corporation with an office 20 and place of business in Atlanta, Georgia and is engaged in the business of providing business process management solutions to clients, including car rental services. Eddisons admits that during the past calendar year it has provided services valued in excess of \$50,000 to entities located outside Georgia, including Avis Budget Group at its facility located at the Minneapolis St. Paul International Airport (MSP Airport). It is alleged in the consolidated complaint that 25 Respondent ISG has been a corporation with an office and place of business in Beverly Hills. California, and has been engaged in business as a staffing agency. It is alleged in the consolidated complaint that Respondent Modern has been a corporation with an office and place of business in Fort Meyers, Florida, and has been engaged in business as a provider of staffing service. It is alleged in the consolidated complaint that, during the past calendar year. 30 ISG and Modern, have each provided services valued in excess of \$50,000 to entities located outside the states of California for ISG and Florida for Modern, including Eddisons at the MSP Airport. Based on its admissions as to the nature and size of its operations across state lines, I find Eddisons has been and is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. ISG and Modern have each failed to file an answer to the 35 consolidated complaint. Accordingly, as set for below, I have granted counsel for the Acting General Counsel's motion for summary judgment with respect to those to entities, and have found the commerce allegations set forth in the complaint pertaining to ISG and Modern to be admitted and that they are each are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. I also find it has been established that the Union is a labor 40 organization under Section 2(5) of the Act.

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² In making the findings, I have considered the witnesses' demeanor, the content of their testimony, and the inherent probabilities of the record as a whole. In certain instances, I have credited some but not all of what a witness said. See *NLRB v. Universal Camera Corporation*, 179 F. 2d 749, 754 (C.A. 2)), reversed on other grounds 340 U.S. 474 (1951).

II. ALLEGED UNFAIR LABOR PRACTICES

A. Procedural Matters

1. The Motion for Default Judgment Pertaining to Modern and ISG

As set forth above, ISG and Modern did not file answers to the consolidated complaint, and at the hearing counsel for the Acting General Counsel requested partial default judgment against each, a motion which was renewed in their post-hearing brief. The charge in case 18-CA-089194 was filed on September 13, against Modern and it was served to Modern by regular mail by Region 18 to the attention of Brian Rexroat, President at a Fort Myers, Florida address. The charge in case 18-CA-089401 was filed on September 17, against ISG and it was served on September 18 by regular mail by Region 18 to the attention of Raymond Ferruchi at a Beverly Hills. California address.

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An order consolidating cases and consolidated complaint and notice of hearing issued by Region 18 on November 6 against Eddisons, ISG, and Modern. The then outstanding complaint called for a hearing on December 19, and it notified the Respondents that an answer must be received by the Region on or before November 20 or postmarked on or before November 19. It is stated "If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the consolidated complaint are true." The service sheet for the consolidated complaint shows that the Region mailed it by certified mail to Eddisons to the attention of Robert Thompson to an Atlanta Georgia address, with a copy by regular mail to then Eddisons' attorney James Sherman; by certified mail to Modern to the attention of Rexroat at the Fort Myers address; and by certified mail to Irina Shtarkman of ISG at the Beverly Hills address. Regional office records show a signed return receipt card for the consolidated complaint was received by the Region for the ones addressed to Thompson and Shtarkman.

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The Region issued an order rescheduling the hearing on December 12 to a new date of February 26, 2013, and the order was sent to the aforementioned individuals at the addresses previously listed by certified mail. Signed return receipt cards were received by the Region for the mailings to Thompson and Shtarkman. On February 7, 2013, the hearing was postponed indefinitely and all parties were notified by the Region by regular mail of the postponement. On February 28, 2013, all parties were notified by regular mail by the Region that the hearing was rescheduled to April 30, 2013. On April 9, 2013, the hearing was rescheduled to June 18, 2013, and all parties, including Eddisons then attorney Sherman, were notified by the Region by regular mail at the above addresses on April 9, 2013 of the new hearing date. By letter dated June 7, 2013, Sherman notified the Region that his law firm was withdrawing its appearance as representative of Eddisons. Sherman had filed an answer to the consolidated complaint, dated November 12, 2012, on behalf of Eddisons. Eddisons was the only Respondent to file an answer. At the hearing on June 19, 2013, Counsel for the acting General Counsel made a motion for a partial default judgment with respect to ISG and Modern. In addition to service of the consolidated complaint on these Respondents, as discussed above, counsel for the Acting General Counsel offered exhibits to establish the Region's efforts to contact these parties over the last several months preceding the hearing.

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Concerning Modern, the cover envelope for the consolidated complaint marked unclaimed by the Postal Service on November 9, was received back by the Region on December 10, containing a copy of the consolidated complaint. On November 21, a letter was sent to Rexroat by the Region informing him that a consolidated complaint issued in the above

case on November 6 and reminding him it was necessary to file an answer by November 20. He was informed that unless an answer to the consolidated complaint was filed by close of business on November 26 it was the Region's intention to file a motion for default judgment. A certified letter of the order rescheduling the hearing to February 26 was marked unclaimed by the Postal Service by Rexroat on December 17 and returned to the Regional office. Similarly a letter, dated December 19, was sent to Modern by regular and certified mail to the attention of Rexroat or other agent. It contained another copy of the consolidated complaint and the December 12 order rescheduling the hearing and the November 21 prior letter. The December 19, letter stated this is the final notice that absent the filing of an answer by close of business on January 4, 2013, a motion for default judgment will be filed. The December 19 letter went unclaimed by Modern. All these mailings were sent to the Fort Myers, Florida address. This is the address tendered by Modern in its contract proposal to Eddisons to supply certain manpower at issue in this proceeding.

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The Region sent a letter dated November 21 to ISG to the attention of Shtarkman stating a consolidated complaint issued on November 6 and it was necessary for ISG to file an answer to the complaint by November 20. It stated unless the answer to the consolidated complaint is filed by close of business Monday, November 26, it was the intension of the Region to file a motion for default judgment. The letter was sent to the Beverly Hills California address previously cited. The Region provided a sworn declaration that a true copy of the order consolidating cases and consolidated complaint and notice of hearing and order rescheduling hearing was hand delivered to ISG's Beverly Hills address on December 19, 2012. On December 20, the Region sent by regular and certified mail to ISG a letter detailing the history of prior service of the consolidated complaint and stating this was the final notice that the failure to file an answer by January 4, 2013, would result in the filing of a motion for default judgment. The Region received a signed return receipt for the certified letter dated December 27.

Section 102.113 of the Board's Rules and Regulations provides complaints shall be served upon a party either personally or by certified mail. Service of a complaint is accomplished by deposit in the mail to the last known address of a respondent and can be proven by affidavits from Board agents. CCY New Worktech, Inc., 329 NLRB 194, 194 (1999); and National Automatic Sprinkler, Inc., 307 NLRB 481, 481 fn 1 (1992). A respondent's failure to claim certified mail does not serve as a defense to its failure to file an answer to the complaint. See, Michigan Expediting Serv., 282 NLRB 210, 210 fn 6 (1986). Counsel for the Acting General Counsel satisfied the service requirements for both ISG and Modem. Here, the record showed that a copy of the consolidated complaint was served on ISG and Modern's last known address. In fact, a signed return receipt card was received by the Region for its service on ISG. As to Modern, the Region served the complaint on the address relied upon by Modern in its contract with Eddisons for the work at issue. Moreover, that same address was used by Eddisons to serve Modern with a copy of Eddisons' answer to the consolidated complaint. The Region also tendered reminders in the form of subsequent letters to Modern and ISG that the motion for default judgment would be filed absent the filing of an answer. However, no answer was filed by either party.³

³ Counsel for the Acting General Counsel asserts they inadvertently submitted into evidence articles of incorporation for Modern dated 2002 containing an incorrect address. They assert, however, that Modern was properly served because documents were sent to the address in Modern's contract with Eddisons, as well as in Modern's current articles of incorporation, which were not submitted into evidence. Any other articles of incorporation by Modern are not part of this record. However, I am satisfied the address used in its contract with Eddisions was an appropriate address for Modern in the circumstances here. Modern, during

Counsel for the Acting General Counsel assert in their brief the failure of Modern and ISG to file answers "warrants a finding that all allegations in the consolidated complaint are admitted as to Respondents ISG and Modem." While Eddisons did file an answer which denied several complaint paragraphs concerning its relationship with Modern and/or ISG and other complaint allegations, I do not find Eddisons answer should benefit either Modern or ISG which after repeated reminders failed to file their own answers as required by the Board's regulations. Moreover, based on the evidence presented, I have found the consolidated complaint allegations relating to Eddisons and its relationship with Modern and ISG to be established despite Eddisons denials of such in its answer. I therefore find Counsel for Acting General Counsel's Motion for Default Judgment against Modern and ISG is warranted, and it is granted.

2. Eddisons Failure to Comply with Subpoenas

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On February 6, 2013, a subpoena ad testificandum issued by counsel for the Acting General Counsel by certified mail to Bernie Oliviares to attend the hearing in this matter then scheduled for February 26, 2013. A separate subpoena ad testificandum was sent to Oliviares at EFS Minnesota, LLC by certified mail calling for his attendance at the hearing on February 26, 2013. It was represented by counsel for the Acting General Counsel that Oliviares is a supervisor/manager for EFS Minnesota LLC. The Region received separate signed receipt cards for each subpoena on February 12, 2013. On February 6, 2013, a subpoena ad testificandum issued by certified mail to Robert Thompson, Eddisons Facility Services and a separate subpoena duces tecum issued to Robert Thompson or other custodian of records. Eddisons Facilities Services LLC. The Region received signed return receipt cards for each of the subpoenas. All of the aforementioned subpoenas called for the attendance at the then scheduled February 26, 2013, hearing but additionally stated "or any adjourned or rescheduled date...". At the trial on June 19, 2013, counsel for the acting General Counsel identified what she represented were written communications she made to Sherman, who was then counsel for Eddisons, on May 16, 2013 asking him to advise his client that all subpoenas ad testificandum and duces tecum previously issued including those to Thompson remain fully effective and enforceable for the hearing scheduled to begin on June 18, 2013. Counsel for the Acting General Counsel identified another written communication addressed to Sherman on June 5 discussing if he planned to produce the subpoenaed documents ahead of trial and asking Sherman to advise Oliviares that his subpoena is fully effective and enforceable. She informed Sherman that Thompson needs to be at the hearing throughout the week. Counsel for the Acting General Counsel also produced an email from herself to Thompson dated June 7 which is the date Sherman withdrew as counsel for Eddisons. It stated that subpoenas issued to Thompson to appear and produce documents are still both fully effective and enforceable. At the hearing since neither Thompson nor Oliviares appeared or produced subpoenaed documents, counsel for the Acting General Counsel requested that she be allowed to rely on secondary evidence.

In addition to Modern and ISG failing to file an answer to the complaint, none of the three Respondents attended the hearing. In this regard, subpoenas ad testificandum and/or duces tecum were served upon officials of Eddisons, and its subcontractor EFS Minnesota LLC

this time period, apparently was also using a Sarasota, Florida address. I find the Fort Myers address was appropriately used by the Region for service as it also was used by Modern as the billing address for meeting rooms at the SpringHill Suites Hotel for the period of September 5 to 12.

(EFS), which is owned by the owner of Eddisons. These subpoenas were not complied with. While the hearing was postponed several times, the subpoenas on their face were continuing in nature, and I have concluded that counsel for the Acting General Counsel have established sufficient notice to the recipients of their continuing obligation to comply at the hearing. Since Eddisons refused to comply with said subpoenas, I granted counsel for the Acting General Counsel's request to submit secondary evidence into the record. See Bannon Mills, 146 NLRB 611, 613 fn 4, 633-634 (1964); and American Art Industries, 166 NLRB 943, 951-953 (1967), affd. in pertinent part 415 F.2d 1223, 1229-1230 (5th Cir. 1969). The records requested in the subpoena duces tecum served upon Eddisons included operations 10 communications; subcontracting and licensing agreements; hiring and retention documentation; job advertisements; and payroll records. The subpoena ad testificandum called for the attendance at the hearing of Eddisons' owner and president Thompson. The subpoena on EFS Minnesota called for the attendance of management official Bernie Oliviares. The record established that EFS Minnesota is a company owned by Thompson, the owner of Eddisons. The failure of either individual to attend the hearing and for Eddisons to produce the subpoenaed materials allows for the drawing of an adverse inference that their testimony and the subpoenaed materials would not support Eddisons' position at the trial. See, Carpenters Local 405, 328 NLRB 788, 788 20 fn. 2 (1999); ADF, Inc., 355 NLRB 81 fn. 2 (2010), reaffirmed and incorporated in 355 NLRB 351 (2010); and Paint America Services, 353 NLRB 973, 989 (2009).

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B. The Alleged Unfair Labor Practices

1. The Relationship of the Entities Used to Replace GCA as ABCR's Contractor at the MSP Airport

Avis Budget Car Rental, LLC (ABCR) operates a car rental business from the Minneapolis-St. Paul International Airport (MSP Airport). John Weber testified he is ABCR's city manager for Minneapolis, Minnesota and he has held that job since February 2013. Weber is responsible for the daily operations of ABCR's car rentals in Minneapolis, including the MSP Airport. Weber testified Terry Jordan was his predecessor as city manager in Minneapolis. Minnesota.

Weber testified ABCR rents cars for both the Avis and Budget brand out of the MSP Airport. The customer service representatives are employed by ABCR. However, the movement of the rental cars is performed by on-airport and off-airport shuttlers, who are not employees of ABCR, but are vended employees. Cars are also cleaned for rental by vended employees known as service agents. Weber testified that, at the time of his testimony on June 18, 2013, Eddisons was ABCR's contractor providing car shuttling and car cleaning services at the MSP Airport. Weber did not know if it was Eddisons LTD or LLC.⁵ Weber testified the

⁴ Weber more precisely testified he is employed by Avis Budget Group, Incorporated, which I have concluded is a subsidiary or related company to ABCR, if they are not the same entity. For purposes of clarity of this decision, all of these Avis Budget entities will jointly be referred to as ABCR. In this regard, the master supplier agreement used by ABCR for the contract work at issue includes providing services to its subsidiaries and the like.

⁵ By position statement dated June 3, 2013, Eddisons attorney stated "Eddisons Facility" Services LLC is no longer functional." I do not credit or discredit this statement, but note the representation has been made.

shuttlers and service agents working on ABCR product at the MSP Airport are Eddisons' employees. He testified a car may also be moved off site if they have too much inventory at the airport such as a holding lot either at the administration building or at the ABCR distribution center, which is at 7542 Longfellow Avenue. Weber testified there is a history of ABCR's subcontracting for the on-site shuttling, off-site shuttling, and service agent work at the MSP Airport. Weber testified the contractors have changed over time but the work performed remained the same. Weber did not know when GCA, a prior ABCR contractor for the work, began to perform the work. Weber was aware that Modern was a subcontracted vendor for Eddisons for this work. Weber testified that, when he took his current position in February 2013, his main contact with Eddisons was Thompson. At the time of the hearing, Weber's main contact with Eddisons is John Payne. Weber testified Joe Perales is an Eddisons employee, and Weber thought Perales still works for Eddisons for the work for ABCR at the MSP Airport. At the time of the hearing, Perales was assigning drivers to make moves to and from pumps.

Concerning the history of ABCR's subcontracting the car shuttler and service agent work, effective September 29, 2009, ABCR entered into a "Master Supplier Agreement" with GCA Production Services, Inc (GCA) wherein GCA agreed to supply employees to ABCR to perform services at ABCR's locations as agreed upon by the parties. On June 5, 2010, a requisition for the supply of services was entered with GCA pursuant to the Master Supplier Agreement between ABCR and GCA. The requisition provided that GCA will manage and operate the on airport shuttling duties for ABCR to meet the required needs at the MSP Airport location. It stated GCA was responsible for managing and allocating its staff to address ABCR's car shuttling. The term of the agreement was to commence June 5, 2010, and expire on June 5, 2013.

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Eddisons Facility Services LLC (Eddisons) is owned by Thompson, who is also its managing director. Eddisons is a licensee of Eddisons Facilities Services LTD (Eddisons LTD), a company based out of Ireland. Effective July 18, 2011, Eddisons LTD acquired Stryden, Inc. (Stryden) through an asset purchase agreement, where Eddisons LTD agreed to perform services under a "Master Supplier Agreement" between Stryden and ABCR, which had been effective April 1, 2010. Stryden had been the predecessor contractor to GCA performing car rental services for ABCR at the MSP Airport. ABCR produced at the hearing a "Statement of Work Requisition" for the MSP Airport and off airport locations dated September 12, 2012, between ABCR and Eddisons LTD. The services were to begin being supplied by Eddisons LTD on September 12, and continue for a term of three years. While this agreement was between ABCR and Eddisons LTD, it listed Thompson, under the name of Robby Thompson with an Eddisons USA email address as the "Supplier Regional Manager/Point of Contact" for Eddisons LTD. In fact, Eddisons stated in it answer to the consolidated complaint that on September 5, 2012, Eddisons LTD, a separate entity from Eddisons, entered into an agreement with ABCR to perform certain services at the MSP Airport. It is stated in the answer that Eddisons subsequently agreed with Eddisons LTD to render the agreed services to ABCR commencing on September 12. In fact, Thompson explained in his pre-hearing affidavit that Eddisons has a licensing agreement with Eddisons LTD, and that Eddisons took over Stryden's car rental contracts as part of Eddisons licensing agreement with Eddisons LTD.6

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Thompson testified EFS Minnesota LLC (EFS) is a subcontractor of Eddisons and is responsible for the general management and operation of Hertz Transporters, pursuant to Eddisons' separate contract with Hertz. Thompson testified he is the sole owner of EFS, which

⁶ Any reference to Thompson's testimony in this decision is referring to his pre-hearing affidavit, as he failed to comply with subpoenas and did not attend the trial in this case.

has an office at the Hertz location on Davern Street in Minnesota. He testified Bernie Oliviares is an administrator for EFS and he reports to Antonio Arias who reports to Thompson.

On October 10, Eddisons filed a position statement with Region 18, under the signature of Sherman. The position statement stated it was filed on behalf of Eddisons. It stated Eddisons was incorporated in July 2011, and its sole owner is Thompson. It stated that ABCR contacted Thompson in April to inquire if Eddisons would be interested in bidding on their work. It stated Eddisons looked to find subcontractors who could adequately staff and manage the car rental business at MSP Airport. It stated Thompson found two subcontractors, A-1 Staffing and Modern Staffing. By position statement to Region 18, dated October 17, Sherman stated that he had sent to the Region Eddisons agreement with Modern Industrial Services, Inc.. He stated Bryan Rexroat is the president of Modern. The position statement stated that Eddisons' agreement with Modern pertaining to staffing at the MSP Airport was signed on August 31. It stated Eddisons did not know when Modern began recruiting or hiring staff for this project but they agreed to be prepared to start work on September 12. Sherman stated that Eddisons agreement with Hertz was different than its agreement with ABCR in that Eddisons only provided rental car moving with Hertz, whereas with ABCR it provided moving and cleaning of rental cars. As such, Eddisons agreement with ABCR calls for significantly more man hours than its agreement with Hertz.

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Paul Slattery is employed by the Union as an organizer. On February 6, Slattery filed a petition for election with Region 18 for a unit of then GCA employees performing car shuttle and cleaning services for ABCR at the MSP Airport. On February 14, ABCR Manager of Procurement Justin DeJoseph sent an email to Eddisons Owner Thompson stating, "We would like to get you in to Minneapolis to bid ASAP." That same date, by email, Thompson asked DeJoseph if he had permission to contact the location managers at MSP Airport and another location and move forward on a site survey, with discretion. Thompson was told the contact for ABCR at the MSP Airport is Terry Jordan. DeJoseph was soliciting Thompson to bid on the work performed by the petitioned for bargaining unit employees of GCA.

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Slattery testified GCA became the employer of what were to become the bargaining unit employees on June 6, 2010. He identified the Excelsior list GCA provided which the Union received for the Board election and it contained hire dates for many of the employees pre-dating June 2010. Slattery testified that in talking to the employees during the campaign they told him. the earlier date signified the date they started with either ABCR or possibly a different contractor than GCA at the location doing the same work. Slattery testified there was an employee organizing committee for the union campaign at GCA, naming five employees, including Laura Castro. Slattery testified Castro got cards sign, distributed leaflets, and talked to workers about the benefits of joining the union. He testified he met with Castro on a one-on-one basis. The Union and GCA entered into a stipulated election agreement which was approved by the Regional Director of Region 18 on February 21. An election was held on March 14, at the GCA's facility at 7542 Longfellow Avenue South, Minneapolis, which Slattery testified was ABCR's distribution center. On March 21, Region 18 issued a certification of representative for the Union pertaining to GCA for a unit of employees including: "all full-time and regular part-time drivers, vehicle service agents and leads employed by the Employer at its 7542 Longfellow Avenue South Minneapolis facility."

On March 21, Jordan sent DeJoseph an email stating she had met with three named vendors, one of which was Eddisons and Eddisons would be providing a bid soon. On March 23, Thompson sent DeJoseph a summary proposal for Eddisons. On July 6, D. Michael Kopp of GCA Services wrote ABCR Regional Manager Operations Robert Jarrett stating GCA was

experiencing an economically challenging situation at the MSP Airport, stating they had years of tenure at the location but were unable to correct financial losses. Kopp requested an amendment to several financial aspects of their contract. On July 9, DeJoseph responded to Kopp stating ABCR did not agree to the requested contract changes citing performance issues at the location. ABCR and GCA agreed their contract would be terminated at the MSP Airport location with GCA providing services at the location until September 6. Correspondence dated July 12 showed that GCA had to extend the date to September 10 due to WARN notice requirements. Concerning the possibility of a work disruption at the MSP Airport location when GCA informed the employees that they would be ending their contract, on July 13 Jordan wrote to Jarrett that "Tim said to me-'I am pretty sure the employees will stay assuming they will just be brought on by the new company.....I did not comment of course. So-I agree-will be interesting." Another internal ABCR email stated the transition should not take place on a Monday that the preferred end date would be Tuesday September 11 at 11:59 p.m.

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15 On July 23. Thompson sent DeJoseph a formal proposal on behalf of Eddisons to perform the work at the MSP Airport, theretofore being performed by GCA. The proposal made no mention that Eddisons intended to use subcontractors. In its proposal, Eddisons stated Eddisons will manage on airport shuttling, service agent and off-lot driver work groups at the MSP Airport. It stated Eddisons assigns the following management hierarchy to each account 20 which included a corporate human resources manager who was responsible for recruiting, screening and selection of candidates and in designing a recruitment plan for locations. It stated the HR managers track seasonal trends and implement hiring campaigns based on expected rental demand. The organizational hierarchy included a general manager responsible for scheduling employees, on-site orientation, training, weekly meetings with the client's 25 management staff as well as field audits of performance. It included an on-site supervisor for multiple positions shifts for a micro managed work force. It also included a lead position which was defined as seasoned service agent or transporter responsible for on lot van movement and quality control. It stated Eddisons was required to certify that each supplier employee holds a valid driver's license, has passed a pre-hiring drug test, and has completed the supplier's hiring 30 process which includes a satisfactory driving history from the department of motor vehicles and a statewide criminal background check. The proposal included a detailed training program and provisions related to pre-employment drug testing. The proposal included a workplace harassment policy, a safety policy, a substance abuse policy, and a code of conduct for employees. The proposal listed Eddisons Facility Services. It did not distinguish between 35 Eddisons LTD and Eddisons LLC. However, it contained Eddisons Atlanta address; listed Thompson as the managing director, and provided an Eddisons USA website.

On August 24, Thompson proposed amendments to Eddisons initial proposal due to projected harsh weather conditions at MSP for the next 6 months. On August 30, David McKenna, ABCR director of strategic procurement sent an email to various officials pertaining to the MSP Airport stating for the first 6 months "after we transition from GCA to Eddisons, we allow them to subcontract at hourly rates for these services" which included shuttling both on and off airport, and service agent. It stated then after the initial 6 months and for the remainder of the 36 month term Eddisons will perform all services at the following rates, which included shuttling both on and off airport, and service agent work.

Thompson testified, in his pre-hearing affidavit, that around the beginning of August he placed a bid on the driver and service work and off-site driver work for ABCR at the MSP Airport. He testified the original offer made no mention of the use of subcontractors. However, he testified all of Eddisons accounts with Eddisons LTD use subcontractors and because of the limited amount of time Eddisons had to start servicing the contract with ABCR using

subcontractors was necessary, and Eddisons also needed to use subcontractors to remain in insurable. Thompson testified he subcontracted the work agreed to by Eddisons agreement with ABCR at MSP to Modern Industrial Staffing, Inc. and A-1 Staffing, with the latter being responsible for the hiring and payroll of approximately 12 lead persons to act as supervisors for the service agents and drivers and Modern was responsible for the staffing hiring and firing of the employees supervised by the A-1 leads.

On August 29, Thompson and Modern President Rexroat began a chain of email correspondence concerning the MSP Airport location with Rexroat stating he was putting a formal proposal together. By August 30, Rexroat had attached the proposal to Thompson by email. The staffing contract used by Modern was under the name of Modern Industrial Services, Inc., and it contained the Fort Meyers, Florida address that Region 18 used for service on Modern. On August 31, Rexroat emailed Thompson that Modern's supervisor is booked and will be on the ground this Sunday, which would be September 2. Rexroat listed the name of Modern's supervisor as Thomas Pate, and he provided Thompson with Pate's cell number, and email address via Modern's email account. Rexroat asked Thompson, "When can we expect to start having the applicants that you have in your system? We are working all weekend so feel free to call or email."

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20 Eddisons signed the contract with Modern on August 31 with a start date for staffing of September 12. The contract does not label Eddisons as Eddisons LTD or LTC. However, Sherman by position, statement dated June 3, 2013, stated the contract was between Eddisons LLC and Modern. Thompson and Rexroat were the signatories on behalf of their respective organizations. The contract states that Modern agreed to supply labor and supervision as 25 needed by Eddisons. It was agreed Modern would be the vendor of choice for all driver and service agent positions for the first 60 days of the contract. Eddisons agreed to assist Modern with any general safety and health training necessary to perform the assignment. Eddisons agreed to have an on-site manager to provide training and orientation before the project begins. Modern agreed to submit daily timesheets to Eddisons' supervisor for approval. Modern agreed 30 all employees provided to Eddisons will successfully complete a background record check and drug screening, and have required licensing. If requested, Modern agreed to provide Eddisons copies of the background check, drug screen, and I-9 compliance records. Eddisons agreed to provide any safety or hygiene protection required to perform regular work duties, and pay for required physicals and/or drug screens. The agreement stated Modern certifies that each of its 35 employees holds a valid driver's license, has satisfactorily passed a pre-hiring drug test, and completed Modern's hiring process which includes a satisfactory driving history from the department of motor vehicles and a statewide criminal background check. Modern agreed to maintain a copy of each employee's license and driving history abstract on file for inspection by Eddisons. The agreement stated that if Modern became subject to a collective-bargaining 40 agreement Eddisons may terminate its agreement with Modern. The agreement stated if Modern's facility manager or any of its employees were not acceptable to Eddisons for any reason Eddisons could request Modern to remove those employees.

By email dated October 24 to Region 18, Sherman stated that EFS Minnesota LLC (EFS) is not a party to any pending Board charges. Sherman stated Thompson owns EFS and therefore Sherman was authorized to represent that entity. Concerning Eddisons Services LTD, Sherman stated Thompson cannot speak for them and Sherman did not represent them. Sherman stated Eddisons is Thompson's company and it is licensed to operate in North America under the Eddisons name. Sherman stated Thompson has indicated Eddisons Services, LTD is the Ireland entity with which his company Eddisons has its licensing agreement. Sherman stated Thompson clarified that the actual contracts with ABCR and Hertz

at MSP airport, as well as all 17 such contracts mentioned in his affidavit, are entered into by Eddisons Services LTD. Eddisons then carries out the services pursuant to those agreements as part of its licensing agreement with Eddisons LTD. Thompson testified in an affidavit dated October 24 that he is the owner and managing director of Eddisons Facility Services LLC (Eddisons). Thompson testified Eddisons has the licensing agreement with Eddisons LTD. Thompson testified that Eddisons LTD purchased Stryden, Inc. He testified Eddisons took over some of Stryden's contracts as part of the licensing agreement with Eddisons LTD. He testified that Eddisons services 17 contracts with car rental companies across the United States.

Thompson testified that on August 27 he was informed by his assistant Eddisons was receiving mail at Hertz' Davern Parkway address for Eddisons Facility Services LLC. Thompson told his assistant to have Oliviares send the envelopes to Eddisons' Atlanta address. Thompson testified he received them in Atlanta and had one of his assistants return the envelopes to the individual addresses listed on the envelopes. He testified he did not open any of the envelopes because he assumed they were job applications. He testified he did not open them because Eddisons was not taking applications. Thompson testified a collective-bargaining agreement was either mailed or dropped off to Eddisons at the Hertz address around September 7.

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Subpoenaed records from ABCR shed more light on what was transpiring concerning the hiring situation to replace the terminated GCA employees. In this regard, on September 4, Keith Hegidio, Eddisons national operations manager, emailed Jordan and told her that he would be visiting her operations September 5 to 7, and sought to introduce himself to Jordan. On September 4, Thompson emailed ABCR Director of Strategic Procurement Dave McKenna with a copy to Jordan stating that one of Eddisons managers has been at MSP Airport training staff since last week, that another one of their regional managers would be in MSP starting tomorrow, and that next week Thompson, their operations director, and two corporate recruiters would be on site all week.

2. The Sequence of Events as They Relate to the Alleged Unfair Labor Practices Including Respondents' Conduct Violative of Section 8(a)(1) of the Act

ABCR entered into a "Master Supplier Agreement" with GCA in 2009, and on June 5, 2010, entered into a requisition agreement with GCA where GCA agreed to manage and operate the car shuttling and cleaning duties for ABCR at the MSP Airport. The term of the agreement was to expire on June 5, 2013, and it allowed for certain cancelation rights for the parties during the term of the agreement. On February 6, 2012, the Union filed a petition for election for the GCA employees servicing ABCR at the MSP airport. On February 14, just eight days later, ABCR Procurement Manager DeJoseph sent an email to Eddisons owner Thompson stating, "We would like to get you in to Minneapolis to bid ASAP." The timing and urgency of DeJoseph's requests suggests it was in direct response to the Union's petition for an election rooted in ABCR's strong desire not to have a unionized subcontractor at this location. DeJoseph told Thompson to contact ABCR Minneapolis City Manager Jordan concerning the MSP Airport work.

The Union won an election to represent a unit of GCA employees on March 14, and on March 21, Region 18 issued a certification of representation to the Union for a bargaining unit of GCA employees servicing ABCR with car shuttle and cleaning services at the MSP Airport. On March 21, Jordan notified DeJoseph by email that Eddisons would be providing a bid soon. On July 9, DeJoseph denied a request by GCA to amend its contract due to reported financial losses, and ABCR and GCA agreed to terminate that contract effective September 6, which was

eventually changed to September 11. Concerning the possibility of a work disruption at the MSP Airport location when GCA informed the employees that they would be ending their contract, on July 13 Jordan wrote to ABCR Regional Manager Operations Jarrett that "Tim said to me-'l am pretty sure the employees will stay assuming they will just be brought on by the new company......I did not comment of course. So-I agree-will be interesting." I find this comment by Jordan revealing. It reveals an intent to deceive the GCA employees to the effect that they would be picked up by the new contractor as they had in the past when ABCR had changed contractors. It was clearly ABCR's intent that this would not take place by Jordan's remarks that she did not comment and it "will be interesting." There would be nothing for her to hide, and nothing of particular interest if ABCR had intended for the employees to be hired as had been the past practice. Rather, the timing of ABCR's solicitation of Eddisons bid, shortly after the Union's petition for election, and the tenor of Jordan's remarks suggest it was ABCR's intent to rid the operation of the Union by the sudden changing of contractors and the planned subsequent refusal of the new contractor to hire the former unionized GCA employees.

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On July 12, GCA sent the Union a WARN notice stating that the GCA and ABCR account at the MSP Airport would be terminated effective September 11. On July 23, Thompson sent DeJoseph a formal proposal on behalf of Eddisons to perform the work at the MSP Airport, theretofore being performed by GCA. The proposal made no mention that Eddisons intended to use subcontractors.⁷

Following the receipt of the July 12 WARN notice, during contract negotiations with GCA, Union Organizer Slattery was informed that Eddisons was going to replace GCA as the contractor with ABCR.⁸ Eddisons was already providing car shuttling services to Hertz at the MSP Airport through what Thompson described as Eddisons subcontractor EFS, which he testified he was the sole owner. Thompson testified Bernie Oliviares is an administrator for EFS. On August 14, Slattery went to the Hertz Davern Street distribution center which services the MSP Airport, and where he testified Eddisons had offices. Despite Thompson's claim that Eddisons was operating at the Hertz location through EFS, Slattery saw a posting on the door inside of one of the buildings with Eddisons name and logo. Through a posting at the facility, Slattery saw that Eddisons site manager was Joe Perales. Slattery returned to the Davern Street facility on August 15, went to the office and spoke to a young Latino male, who counsel for the Acting General Counsel argues was Oliviares, since Eddisons and Oliviares failed to comply with outstanding subpoenas, I have concluded based on Thompson's pre-hearing admissions that Slattery was speaking to Oliviares. Slattery asked if they were hiring drivers and service agents and the response was they were. At Slattery's request, Oliviares gave him a one page job application, and told Slattery it was alright if he filled it out and brought it back. Slattery returned to Eddisons Davern Street location later in August and he saw a sign that read, "Eddisons interviews for positions as Airport Drivers are located in the building next door."

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⁷ Thompson's July 23 proposal has been previously summarized in this decision.

⁸ Considering their demeanor, and the record as a whole I found Slattery, Union Business Agent Bryan Rademacher, former GCA employees Laura Castro, John Myers, Ron Beckles, Sahra Wali, and Bill Hansen to be credible witnesses to the extent their memories would permit. I have credited their testimony and relied upon it, as supplemented by documents, for the findings set forth above. I have credited ABCR official Weber's testimony as set forth in the body of this decision, although I found it to be a little suspect that as Minneapolis city manager he claimed to have not known the full name of the Eddisons entity that was performing services for ABCR at the time of his testimony.

Subsequent to his initial two visits to Eddisons at the Hertz distribution center, Slattery found a website for Eddisons with the same logo as that posted on the Eddisons door at the distribution center. Through his internet search, Slattery learned Eddisons had a Minneapolis-St. Paul location on Glumack Drive, which is the MSP Airport road. Slattery called the phone number on the website and asked if they were hiring stating he was looking for a driver job. The response was that they were hiring and they gave him a phone number and the site manager's name of Joe Perales. The number Slattery was given for Perales was the same number for Perales listed on the door at the Hertz distribution center.

Slattery again went back on the internet looking for jobs and he found an ad for Eddisons. It listed a phone number, which Slattery called and asked if they were hiring drivers in Minnesota. The woman on the line responded they were hiring at \$8.50 an hour for 32 to 40 hours a week for driving cars at the airport. The woman gave Slattery a new phone number to call, and she gave him the Hertz Davern Street address and told him to go there and apply. Slattery called the number she gave him and spoke to a man named Bernie (Oliviares). Oliviares told Slattery to come and apply. Slattery did not go and apply.

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Slattery identified a packet of ads he found for drivers posted on the internet on Craig's list some by Eddisons. The Eddisons ad was posted on August 20 stating they work for Hertz and were seeking drivers at the Davern Street location. On August 20, Slattery called the Eddisons Davern Street location and spoke with Oliviares about a position. Slattery asked Oliviares if it would be all right if Slattery just mailed his application to him. Oliviares said that would be all right and he gave Slattery the address for Eddisons at Davern Street.

Then GCA employee Castro was a known union activist during the Union's organizing campaign at GCA. The Union held its contract ratification vote for its agreement with GCA on August 22 to 25. Castro testified that 2 days prior to the ratification vote she went to Eddisons Davern Street location to apply for work as a driver, the job she was doing for GCA. Castro spoke to Oliviares, who because of Hertz location at the MSP Airport, had previously seen that Castro was working for GCA. Castro told Oliviares she wanted to apply for a job at Avis. He said he had no information as to the applications for Avis and they were not giving out applications there. Since Slattery had asked for and was given an application for a driver position by Oliviares a few days earlier, and since Eddisons had posted a sign at that Hertz location that they were hiring drivers, I have concluded Oliviares refusal to give Castro an application was because he was aware she was working GCA, which he knew was an organized operation.

Slattery identified a Union announcement which was sent to GCA employees announcing there was going to be a contract ratification vote meeting on August 22, 23, and 25. Slattery testified the Minnesota State Dislocated Workers Program also announced meetings on those dates to the GCA employees to be held at a Homewood Suites Hotel, and to maximize the attendance at its contract ratification meetings the Union set it meetings on the same dates, which were conducted in the lobby of the hotel. At the Union meetings, in addition to the ratification vote, the Union had job applications for the employees to fill out for Eddisons. The Union had envelopes and stamps there, and union authorization cards. The Union provided GCA employees with stamps and envelopes and many of the employees mailed their Eddisons job applications at the hotel front desk. The contract ratification vote was 130 to 6 in favor of ratification. The Union had a sign in sheet for the meeting, and Slattery took photographs of some of the employees' applications and addressed envelopes to Eddisons at the Davern Street address. Slattery counted 78 applications during the August meeting of which he photographed either the envelope or application or both of 67 employees who had filled out applications during

the meetings. Slattery testified he saw several of the GCA employees give their envelopes to the clerks at the hotel front desk for mailing. Slattery saw a large basket of applications at the hotel, but he did not see all 78 of the employees give their applications to the hotel clerks. Some of the GCA employees took the filled out application home for mailing and others got the application and left. Slattery testified he knew GCA employee Castro took the application in an envelope and delivered it in person to Eddisons.

Castro testified she attended the Union's contract ratification vote, and she filled out an application that she received from Slattery. Castro decided to hand deliver the application. That same day, after the ratification vote, Castro went to the Eddisons Davern Street location. When she arrived Oliviares was there. She told him she had an application to work at ABCR. Oliviares said they were already full and they were no longer taking applications. Castro asked Oliviares how it was possible that they were completely full because she had been there two days earlier to ask for an application and at that time he said they had no information as to Avis. Castro gave her application to Oliviares. The application was in an envelope on which Castro had written her name and address and Eddisons name and address. The application was dated August 25. The envelope was not sealed when Castro gave it to Oliviares.

Thompson testified, in his pre-hearing affidavit, that on August 27 he was informed by his assistant that Eddisons was receiving mail at Hertz' Davern Parkway address for Eddisons Facility Services LLC. Thompson told his assistant to have Oliviares send the envelopes to Eddisons' Atlanta address. Thompson testified he received them in Atlanta and had one of his assistants return the envelopes to the individual addresses listed on the envelopes. He testified he did not open any of the envelopes because he assumed they were job applications. He testified he did not open them because Eddisons was not taking applications.

On August 29, Thompson and Modern President Rexroat began a chain of email correspondence concerning the MSP Airport location with Rexroat stating he was putting a formal proposal together. By August 30 Rexroat had attached the proposal to Thompson by email. The staffing contract proposal used by Modern sent to Thompson was under the name of Modern Industrial Services, Inc., and it contained the Fort Meyers, Florida address that Region 18, used for service on Modern. On August 30, David McKenna, ABCR director of strategic procurement sent an email to various officials pertaining to the MSP Airport stating for the first 6 months "after we transition from GCA to Eddisons, we allow them to subcontract at hourly rates for these services" which included shuttling both on and off airport, and service agent. It stated then after the initial 6 months and for the remainder of the 36 month term Eddisons will perform all services at the following rates, which included shuttling both on and off airport, and service agent work.

Eddisons signed the contract with Modern on August 31 with a start date for staffing of September 12. Thompson and Rexroat were the signatories on behalf of their respective organizations. On August 31, Rexroat emailed Thompson that Modern's supervisor is booked and will be on the ground this Sunday, which would be September 2. Rexroat listed the name of Modern's supervisor as Thomas Pate, and he provided Thompson with Pate's cell number, and email address via Modern's email account. Rexroat asked Thompson, "When can we expect to start having the applicants that you have in your system? We are working all weekend so feel free to call or email." Eddisons posted another ad on Craig's list on September 3 for drivers to transport cars from and to the MSP Airport. Hertz was not mentioned in this ad.

On September 4, Keith Hegidio, Eddisons national operations manager emailed ABCR's Jordan and told her that he would be visiting her operations September 5 to 7, and sought to

introduce himself to Jordan. On September 4, Thompson emailed ABCR Director of Strategic Procurement McKenna with a copy to Jordan stating that one of Eddisons managers has been at MSP Airport training staff since last week, that another one of their regional managers would be in MSP starting tomorrow, and that next week Thompson, their operations director, and two corporate recruiters would be on site all week. Eddisons again posted an ad for drivers on Craig's list on September 5 for a job to drive cars to and from the airport. A phone number was provided with the instruction to ask for Bernie (Oliviares).

The Union and GCA entered into a collective-bargaining agreement on September 4, which ran from September 1, 2012 to August 31, 2015. On September 5, Union Business Agent Rademacher sent a letter to Eddisons at Davern Street, to the attention of Joe Perales, site manager. The letter stated that the Union represented bargaining unit employees at GCA giving the address on Longfellow Avenue. He stated the Union had been informed that effective September 12, Eddisons would be undertaking the responsibilities heretofore performed by GCA at that location. Rademacher quoted the collective-bargaining agreement's successor provision, and stated that should Eddisons replace GCA the Union would expect Eddisons to adhere to all provisions of the collective-bargaining agreement, a copy of which was included with the transmission. Thompson testified that a collective-bargaining agreement was either mailed or dropped off to Eddisons at the Hertz address around September 7.

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On September 6, Castro received the job application she had dropped off with Oliviares on August 25 back in the U.S. mail at her home address. The envelope had handwritten notations "GCA" "main person". Neither of these notations were on the envelope when she delivered it to Oliviares. Thompson testified Eddisons had received these applications but had them mailed back because Eddisons was not hiring. I find Thompson's explanation to be not credible. Slattery's phone calls to Eddisons and his contact with Oliviares who gave Slattery an application reveals that Eddisons was hiring. Additionally, during this period Eddisons was posting ads on Craig's lists and other ads for drivers. In fact, Rexroat's email to Thompson when Modern contracted to hire employees at the airport on Eddisons' behalf asked Thompson for all applications Eddisons already had in the pipeline. Clearly, it was Rexroat's understanding, as Eddisons actions confirm, that Eddisons was engaged in hiring of applicants. Thompson's claim that Eddisons was not hiring just needed to be more specific to be true. Eddisons was hiring, it was just not hiring GCA employees, or former GCA employees. I find Eddisons officials wrote on Castro's returned application envelope that she worked for GCA, and with a clear reference that she was the "main person" in the Union's organization drive. I find that such statements with the returned application were coercive and violative of Section 8(a)(1) of the Act in that they could only be reasonably be interpreted by Castro that her application was not being considered because of her union activities at GCA.9

⁹ In *Stations Casinos, Inc.*, 358 NLRB No. 77, JD slip op. at 7 (2012), the following standards concerning conduct violative of Section 8(a)(1) were stated:

As to the merits of the complaint allegation, an employer violates Section 8(a)(1) when it threatens employees with job loss if they engage in union activity. *Trump Marina Hotel Casino*, 353 NLRB 921 (2009). The test for interference, restraint, or coercion is an objective one, and depends on whether "the employer engaged in conduct which would reasonably have a tendency to interfere with the free exercise of employee rights under the Act." *Santa Barbara New-Press*, 357 NLRB No. 51, slip op. at 25 (2011); *Multi-Ad Services*, 331 NLRB 1226, 1227-1228 (2000); Westwood *Health Care Center*, 330 NLRB 935, 949 (2000).

Moreover, an employer violates Section 8(a)(1) if it communicates to employees that they will jeopardize their job security, wages, or other working conditions if they support

Slattery found a series of ads on Craig's list from ISG Industrial Services. These ads were run on September 2, 4, 5, 6, 7, 20, and 22, calling for shuttle drivers, general laborers, and car cleaners. They stated no prior experience needed, the jobsite was Minneapolis Airport. Some gave a choice to call for an interview the listed 800 number; or fill out an application on line. ISG ran a new ad on September 20, which stated, "We work for a rental car company moving and cleaning cars." The ad stated "we can train for these positions." It stated, "Please Call Now and start Tomorrow!!" It stated the location is the Airport. ISG ran a similar ad on September 21, 22, 24, and 25, omitting its name but providing its 800 number. It ran an ad for the Spanish speaking population on September 9. There was an ad listed by the ISG Group, dated September 24, entitled "Job Fair Today" "Near Airport" stating the "Only requirement is that you have a current active Driver License." The address of the job fair was listed as the Courtyard Marriot on Bloomington Ave, South, Bloomington, Minnesota.

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Slattery testified he received a call on Sunday, September 9, from Myers, a GCA employee. He testified Myers told Slattery that Myers went to a job fair and the man at the job fair told Myers they were not hiring any people from GCA. Myers told Slattery he found out about the job fair from an ad on Craig's list.

Myers, along with the other GCA employees was laid off by GCA on September 11. Myers was an on-site driver. Myers testified he found an advertisement on line for working at the airport moving rental cars. Myers testified he clicked on a link which took him to ISG's website. Myers testified there was an online application at the website and he filled it out and submitted it. Myers estimated that on September 1, around a week following his online application, having not heard anything. Myers called the phone number from the online site and a man answered. The man said he was not sure what happened with Myer's on line application, but he told Myers about a job fair at the SpringHill Suites Hotel. During the call, Myers made an appointment to attend the job fair. Myers attended the appointment the next day at the SpringHill Suites Hotel. When Myers arrived at the hotel conference room for the job fair, he stated he wanted to apply for work. The man interviewing applicants asked what kind of work and Myers said to be a driver at the airport. The man said all the driver positions are full but there are other positions open. Myers said he wanted to apply for one of the other positions. Myers said he had experience and the man asked what his experience was to which Myers said "Avis Budget Group." The man stated to Myers, "All right. Look. I'm just going to be straight with you. We can't take any GCA people." Myers testified he never got to apply or fill anything out. Myers testified when he left he called Slattery and told him what happened. Myers testified he did not get the name of the company but the appointment to apply was set up through the ISG website. Myers testified this occurred on a Sunday, prior to his being laid off from GCA.

the union. *Metro One Loss Prevention Services*, 356 NLRB No. 20, slip op. at 1 (2010). I have credited Gaspar's testimony over Phillips' and described above how Phillips warned Gaspar, a known union committee leader, to be quiet about work conditions and staffing shortage complaints or he might end up being discharged like Aquino, another union committee leader who was discharged previously. I have also described above Aquino's involvement with the Union and other workplace issues. I infer, in context, that Gaspar would reasonably understand Phillips' comments to mean that he should remain quiet and not involve himself in workplace issues and the Union. By threatening an employee that he risked losing his job if he engaged in union or other protected concerted activities concerning work conditions, Respondent violated Section 8(a)(1).

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Myers was unsure of the precise date in September. However, I have credited Slattery's testimony that the incident took place on September 9. While ISG ran the ad for the job fair, and directed Myers to the SpringHill Suites Hotel, the record reveals the conference room for the job fair was rented by Modern, and I have concluded based on other record evidence that Modern Supervisor Pate was soliciting applications and conducting interviews at this location.

I find that Myers, who was told the day before by an ISG representative that prior experience was a benefit, was told on September 9, by an official of Modern who was conducting job interviews that they could not hire any from GCA. Myers that same day reported the incident to Slattery his union representative. I find, in the circumstances here, the carte blanche statement that no one from GCA, which had recently signed a union contract, would be hired was tantamount to telling Myers that former GCA employees were not being hired because of their union activities and thereby violative of Section 8(a)(1) of the Act.

Slattery testified he went on Craig's list on September 10, and he found the ISG ads, and he started calling their 800 number listed in the ads. Slattery called the number on September 10, and he told Ray Ferruchi, the man who answered the phone, that Slattery wanted to apply for the airport driving job Slattery saw on Craig's list. Ferruchi told Slattery they were having a job fair at SpringHill Suites and Slattery was to go there at 12 noon for an interview, and to ask for a man named Brian. This was around 8 or 9 a.m. Around noon, Slattery called Ferruchi and told him Slattery could not make the interview. Slattery gave Ferruchi his phone number.

Castro testified on September 10 or 11, the day before the GCA contract was terminated, she made another attempt to apply for work at the MSP Airport. She applied at the Springhill Suites Hotel. Castro testified that day, after her shift was over at GCA, a coworker told her to go to the hotel because there they were giving out job applications for Avis. Castro went to the hotel, along with two GCA co-workers, and saw a posting announcing a job fair. A woman, who identified herself as the hotel manager, directed the GCA employees to a conference room where they were giving out the applications. When Castro arrived at the door of the conference room a man came up to her. The man asked if they were looking for applications and Castro said yes. Castro was asked if she was applying for service or for a driver position and she answered driver. The man asked if she had any driving experience. Castro stated she had 16 years experience. The man asked if she was currently working and she said ves but tomorrow was her last day. He asked where she was working and she said at the airport with GCA. Castro testified as soon as she mentioned GCA, the man said, "Nope. I cannot give you any work." Castro asked why and he said, "We're not going to hire anybody coming from GCA." Castro asked why again, and he said, "I'm not going to give you any work," that they did "not want to hire anybody with – from GCA with them." Castro then asked the man to give her an application but he said, "No." He said this was an order from Avis that they were not to hire anybody from GCA. He told Castro to leave. Castro testified, "then he opened his arms wide, and it was almost like he was trying to push her out of that area so she would not enter. She testified, "He wanted to remove me completely from the hotel." Castro testified the two other GCA applicants with her were treated in a similar fashion. Castro asked the hotel manager her if she knew the name of the job fair company. Castro testified the hotel manager went into the conference room and obtained a business card from the company that was hiring and she gave Castro the card. The card read, "Modern Staffing & Security Consultants, Inc., Thomas Pate Site Supervisor." Castro testified she did not know the name of the man who she was talking to when she tried to apply for work. She testified there was another man in the conference room, and the business card belonged to that individual. He did not say anything during the exchange. She testified he was present when the three women were thrown out. Castro did not receive an application that day. I find that the unnamed man, in Pate's presence, violated Section 8(a)(1) of the Act by telling Castro and the other GCA employees that they were not going to hire anyone from GCA; that there was an order from Avis not to hire anyone from GCA; and by removing said applicants from the job fair because they had engaged in union activities. I find as set forth above, the carte blanche statement that no GCA employees were going to be hired could only reasonably be interpreted as an implied reference to their union activities as the reason for the refusal to hire them.

On September 12 at 5:50 PM, the day Eddisons and Modern replaced GCA as ABCR's contractor, Jordan sent Jarrett, ABCR's regional manager of operations, a memo stating:

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In all honesty-I don't think we have EVER had a more challenging day. 100 new employees for Eddisons; and not one other than 2 leads knew how to clean a car or get from point A to B. It was truly chaos. Much worse than anticipated! Did not get one car to the auction yard and all of the off-apo drivers got lost several times over.

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However-we had waits/delays/call-ins/gridlock/horn honking all over the place. What a day. Not even close to over.

Castro's testimony reveals that: on September 14, she and a group of former GCA 20 employees went to the ABCR Longfellow Avenue distribution center seeking applications to get their jobs back. When the former GCA employees arrived to ask for applications no one came out. Then Slattery arrived at the parking lot and a woman came out of the office. Castro testified the woman refused to talk to the employees. Slattery testified that on September 14, around noon he received a call from Castro telling him to come to the ABCR distribution center, 25 that there were about 50 former GCA employees there in the parking lot who wanted to fill out applications for the successor employer. Slattery went to the location at around 12:15 p.m. He testified it is a fenced lot with only one entrance. When Slattery arrived he went to the crowd of employees, including Castro, who were standing near the entrance. Slattery asked what was going on and the employees said they were there to fill out applications but when they got on 30 site to get an application the people were telling them there were no applications here and they could not apply here.

After Slattery spent some time with the employees, a female manager who identified herself to Slattery as Terry Jordan from ABCR came outside to address the crowd. Jordan told everyone who was taking pictures to put their phones down or she was going to call the police. Jordan then looked at Slattery and identified him by the logo on his jacket as being with the Teamsters. Jordan told Slattery that she would talk to him inside the fence and asked him to come inside. Slattery told Jordan the people were there to fill out an application for the new contractor. Slattery asked her to identify who the new contractor was. Jordan told him that she works for ABCR and she had no relationship with the contractor. Slattery asked Jordan who the site manager was for the contractor and she said she did not know. Slattery asked her to give him the contractor site manager's phone number, but she did not give it to him. Jordan told Slattery that he could leave his name and number with her and she will give it to the new contractor. Slattery gave her his business card. Jordan told Slattery to get the people to leave the parking lot or she was going to call the police. Slattery went back and addressed the crowd. He told them the same thing Jordan told him that there was no one there from the new contractor, which Slattery thought was Eddisons at the time, they could not fill out any applications, and if they did not leave she was going to call the police. No one left and about 10 or 15 minutes later the police arrived, and at the police' request people left. Castro identified a handwritten petition, dated September 14, with the wording "GCA workers press charges for discrimination by Edderson (sic) Rent Car." It contained 67 signatures. Castro testified she

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circulated the petition that day to the former GCA workers who met in the parking lot, after which she gave the petition to Slattery.

Later that day, on September 14, Slattery received a call from Ferruchi on Slattery's cell phone. A Florida number came up for Ferruchi on the caller id, rather than the 800 number on the ISG ads. Ferruchi asked if Slattery was still interested in a job and Slattery said he was. Ferruchi said, "I'll call you back later with a location for you to go and apply." Ferruchi called back a few hours later and told Slattery to go, the following day to the address for the ABCR distribution center, between the hours of 3 and 5 p.m. and ask for a man named Tommy (Pate) to fill out the application. Slattery testified that, following the call, he called each of the employees on the Union's organizing committee and told them to go to ABCR distribution center on Saturday between the hours of 3 and 5 p.m. and told them that they would be taking applications there for the new contractor for ABCR.

15 On September 15, Castro again tried to apply for work with Eddisons at the ABCR distribution center. Castro testified she went to apply because she received a call from Slattery that applications would be available there. When Castro arrived at the facility, and a man named Ricardo was there. Ricardo gave her an application and she filled it out. Later on Ricardo said someone was going to interview Castro and then Pate arrived to interview her. 20 Castro, who is Spanish speaking, referred to Pate in her testimony as "Mr. Tommy". Castro had previously seen Pate at the SpringHill Suites Hotel when she went to apply. Castro testified that, after she filled out the application, Pate interviewed her outside in the parking lot with two other people present, who were also applying for a job. Castro and Pate discussed Castro's work schedule and the type of work they wanted her to do. Pate asked her if she was working 25 and she said she was. He asked Castro what shift she was looking for and she told him the morning. Castro said she was applying for part-time, but Pate said they had no applications for part-time. She asked what the shift hours were and Pate told her. Castro told him she was able to work the 7 a.m. shift. He asked her what her schedule was at her other job. Castro was working for a janitorial company, and she had been doing so while she was working for GCA in 30 that she had two jobs. Pate inquired about her ability to get adequate sleep, and she responded she sleeps enough to be able to do a good job. Castro stated she had worked two jobs many times before and never had an attendance problem. Pate said okay and asked if she was ready to start work and she said yes. Pate told her to come tomorrow, which was Sunday, at 7 a.m. He told Castro she would be paid \$8 an hour and she would be doing service agent work for 35 Avis. Castro took a photograph of the application she gave to Pate that day. The photo is blurred but the top of the pre-printed application form reads ISG Industrial Staffing Group. Castro did not list her prior employment with GCA on the application.

Castro testified that just as Pate told her wage rate, they type of work, and to show up at the next day at 7 a.m. to start, Perales arrived and went into the office. Castro testified in a matter of minutes Ricardo came out and called Pate into the office. Castro testified some minutes later, Pate came out and said he was not able to give Castro the job because he had already given it to someone else. Castro testified Perales worked for GCA as a supervisor in the car rental area for Avis. Castro testified she had worked with Perales. I find Pate's rescinding the offer, after Perales arrival, could only reasonably be construed by Castro to be because of her union activities and therefore the statement was coercive and violation of Section 8(a)(1) of the Act. I do not find, as alleged by the complaint, that it has been established that Pate's telling Castro that no part time employment was available was coercive or due to her union activity. In this regard, Pate offered Castro a full time position shortly after making that remark, and Castro testified she did not believe Pate recognized her as having

worked for GCA at the time the remark was made. Accordingly, the allegation concerning the statement to Castro that no part time employment was available is dismissed.

On September 15 Thompson emailed Jordan stating:

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To address some of the issues yesterday we have implemented the following solutions.

- 1. Any service agent without a driver's license has been instructed that under no circumstances are they to move a vehicle. Joe has assigned licensed drivers to make the move to and from the pumps.
- 2. We have directed our staffing partner that we need 30–40 licensed serviced agents by Monday, I was told this morning that they had 20 today coming in for interviews. I was informed the service agents without licenses will be transferred out of ABG operations, all by Monday morning.
- 3. We have sent two of our account managers from other locations to assist Joe with training leads. One arrives tomorrow and the other arrives Monday. They have been directed to stay in MSP until operations become stable.
- 4. Our staffing partner is also still recruiting for the off lot driver positions. I will have an update tomorrow on the exact number and names of the off lot drivers.

20 On September 16, Beckles, who had worked for GCA as an onsite driver went to ABCR's distribution center to apply for a job. He was told he could not get an application that day but to come back the next day and ask a man who would be wearing a black shirt and black pants for an application. Beckles returned on September 17, and the man in the black shirt told Beckles he had to go on line to get an application. Beckles asked how to go on line and was 25 told there was an 800 number. The man refused to give him the number, but told him to go on the website. When he went outside, Beckles met another man who gave him the 800 number. Beckles called the number and testified he was told to go to a hotel in Bloomington on Monday morning, which would have been September 17. Beckles went to the hotel and saw the same man who he saw earlier that morning, who he described as bald with a goatee. Beckles said he 30 came to fill out an application. There were three people filling out an application and the man gave Beckles one. Beckles heard the man hire a couple of people. When he finished talking to the other applicants, he took Beckles application and asked him to step outside. When they were outside, the man looked at Beckles application and said "You worked for GCA?" Beckles said, "Yes." The man said you were laid off last Wednesday and Beckles said it was Tuesday. 35 The man then said, "I don't have anything opening right now." The man told Beckles he would call him in three days and Beckles thanked him. The man asked Beckles how he got the number and Beckles said one of your employees gave it to him. The man asked the employee's name and Beckles said he did not know. Beckles testified the man never called. Beckles reported the incident to Slattery. Beckles subsequently went back to the hotel, when the man 40 never called him for work, and he also called the 800 number seeking employment, and each time he was rebuffed by the same individual. The last time the man told Beckles not to call the 800 number anymore, and that he did not have anything else.

The consolidated complaint alleges this took place around September 19, at the Courtyard Marriott in Bloomington. However, Beckles could not name the hotel, and his testimony leads to the conclusion that it took place on September 17. Be that as it may, I have credited Beckles that he did attempt to apply, that the Respondents' official during their initial encounter suspected he worked for GCA, and refused to give him an application, or the 800 number he said was needed for Beckles to get one. Nevertheless, Beckles got the number, and although he had prior work experience, the official hired other applicants, then took Beckles outside, questioned Beckles as to whether he worked for GCA which he said he did, refused to

hire him, and then questioned Beckles about how he got the phone number to apply. I find the man's questioning of Beckles as to where he previously worked, and how he found out how to apply compounded with the man's refusal to hire Beckles, while he was hiring others was coercive and could only be reasonably related to Beckles having previously worked for GCA, which was an organized subcontractor. I find the man's questioning of Beckles to be violative of Section 8(a)(1) of the Act as alleged in the consolidated complaint.

By email, dated September 18, to Hegidio of Eddisons and copied to Thompson, Jordan stated:

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I think Joe has underestimated the "few shuttlers short" in the morning. You had your off-apo team driving to the airport until 2:00 pm which in turn prevented us from picking up the cars and the local market and moving enough cars to the auction. Please don't cut labor on our busiest day of the week. It was truly an absolute failure all the way around in service. The ready lines are not full this morning but I know that Joe did the best he could.

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By email dated September 18, Jayne Spado of ABCR wrote to Peyta Atkins, Finance Specialist for Eddisons concerning vehicle damage. Spado stated there were quite a few vehicles fixed in the shop pertaining to tires and mirrors. Spado stated, "I believe much of this damage can be avoided by some simple carwash training if you are interested in passing that along. Almost all of this damage to the right front fenders." By email dated September 27, ABCR official Jeff Carlson wrote to Hegidio that: "Body damage/tire damage. The amount we've seen thus far and the amount we continue to see is astronomical." On October 11, Jordan wrote Thompson asking for a plan to improve the quality of the vehicles at MSP. She stated, "We have done over 150 quality audits since Monday and less than 50% of all cars passed our QA standards...." Jordan sent a separate email to Thompson and Hegidio on October 11 detailing several specific performance complaints. On October 12, Jordan emailed Thompson complaining about the quality of accident reports and stating, "The cars are just 'showing'up with damage all over the place. Please..... Need help."

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3. The Joint and/or Single Employer Status of Eddisons, Modern, and ISG.

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Second, we find that Aim and Jacobson acted as joint employers with regard to McMillan, Bolaños, and Gonzalez. The test for joint-employer status is whether two entities "share or codetermine those matters governing the essential terms and conditions of employment." *Laerco Transportation*, 269 NLRB 324, 325 (1984). To establish a joint-employer relationship, there must be evidence that one employer "meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction of the other employer's employees." Id. The Board has found joint-employer relationships where an employer "participated meaningfully in the exercise of control over matters governing the terms and conditions of employment" of an employment agency's employees. *D&F Industries*, 339 NLRB 618, 640 (2003). See *Capitol EMI*, supra at 1017 (finding joint-employer relationship where employer assigned work to, directly supervised, and could effectively discipline employees of employment agency).

In Aim Royal Insulation, Inc. 358 NLRB No. 91, slip op. at 7-8 (2012), the Board stated:

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Following a determination that two employers were joint employers in *Aim Royal Insulations, Inc.,* slip op at 8, the Board went on to find that they were jointly liable for the unlawful refusal to hire certain applicants stating that:

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Finally, we find that Jacobson is jointly liable for Aim's unlawful conduct. Under *Capitol EMI*, supra, once the General Counsel has established that the two employers were joint employers and that one of them has taken an unlawful discriminatory action against an employee in the jointly managed work force, the burden shifts to the employer seeking to escape liability to show that it neither knew nor should have known of the reason for the other employer's action. Id. at 1000. In the present case, because the Acting General Counsel has met his burden, the burden shifted to Jacobson. The record, however, makes clear that Jacobson Account Manager Chavez was fully aware that Aim Superintendant Campos' requests were motivated by union considerations: Chavez probed the applicants regarding their union status, passed this information to Campos, and then wrote "Union" on their applications. See *Skill Staff of Colorado*, 331 NLRB 815 (2000).

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In re Bultman Enterprises, Inc., 332 NLRB 336, 336-337 (2000), it was stated:

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Under current Board precedent, to establish that two or more employers are joint employers, the entities must share or codetermine matters governing essential terms and conditions of employment. *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1123 (3d Cir. 1982); *Riverdale Nursing Home*, 317 NLRB 881, 882 (1995). The employers must meaningfully affect matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction. *Riverdale*, 317 NLRB at 882, citing *TLI*, *Inc.*, 271 NLRB 798 (1984).

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Here, we find that the judge correctly applied that precedent to the facts of the present case in concluding that the Hotel and Bultman are joint employers. In sum, the judge based his joint employer finding on the Hotel's active involvement in Bultman's hiring of a nonunion work force to replace the Hotel's existing work force, and the terms of the concession agreement between the Hotel and Bultman. This agreement gave the Hotel the right to require Bultman to (1) ensure that its employees adhere to all rules established by the Hotel for its own employees; (2) demand attendance of Bultman's employees at orientations for the Hotel's employees; (3) discipline and/or discharge any Bultman employees whom the Hotel finds objectionable; and (4) "quit and surrender" the concession area to the Hotel in the event Bultman defaulted in fulfilling any of the covenants of the concession agreement. Indeed, the record shows that the Hotel exercised the authority granted to it by the concession agreement, at least through its involvement in the hiring and disciplinary process. [FN5] Accordingly, for all these reasons, we agree with the judge that the Hotel is a joint employer with Bultman of the restaurant employees.

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In *Capitol EMI Music*, 311 NLRB 997, 999 (1993), enfd. 23 F.3d 399 (4th Cir. 1994), the Board stated:

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Joint employers are businesses that are entirely separate legal entities except that they both "take part in determining essential terms and conditions" of a group of employees. *Manpower, Inc.*, 164 NLRB 287, 288 (1967). Accord: *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1122-1123 (3d Cir. 1982), and cases there cited. Where such codetermination of terms and conditions of employment of an appropriate

unit of employees is shown, the Board finds that the joint employers share an obligation to bargain with a properly designated employee bargaining representative. [FN13]

It is conceivable that joint employers might perceive a mutual interest in warding off union representation from the jointly managed employees. In such cases, one joint employer, by its unlawful conduct, might reasonably be regarded as acting in the "interest" of its coemployer by chilling the union activity of the employees. In these circumstances, we might preclude a seemingly "innocent" joint employer from reaping the "benefits" of its coemployer's wrongful conduct by holding the "innocent" joint employer vicariously liable. Such a solution is especially reasonable in the "traditional" joint employer relationship where each joint employer has representatives at the worksite, even if only on an occasional basis, and shares the supervision of the jointly employed employees. In these circumstances, each joint employer is in a position to hear of, inquire into, and investigate reports of its coemployer's unlawful actions. Ascribing vicarious liability to the joint employer in these circumstances requires it to undo or otherwise remedy unlawful actions of which it is in the best position to know and from which it might gain advantage.

This is not the case, however, where one joint employer merely supplies employees to its coemployer [FN17] and otherwise takes no part in the daily direction of the employees, does not participate in their oversight, and has no representatives at the worksite. In this situation, joint employers are not in a position that would allow them to learn, even with the expenditure of reasonable efforts, of their coemployer's unilateral unlawful actions. [FN18] Consequently, in joint employer relationships in which one employer supplies employees to the other, we will find both joint employers liable for an unlawful employee termination (or other discriminatory discipline short of termination) only when the record permits an inference (1) that the nonacting joint employer knew or should have known that the other employer acted against the employee for unlawful reasons and (2) that the former has acquiesced in the unlawful action by failing to protest it or to exercise any contractual right it might possess to resist it. [FN19]

Because a joint employer has, by definition, voluntarily shared its management of a work force with another employer, and because such employers are in the best position to produce evidence of their knowledge of a particular action taken by the other, [FN20] we adopt the following allocation of burdens. The General Counsel must first show (1) that two employers are joint employers of a group of employees and (2) that one of them has, with unlawful motivation, discharged or taken other discriminatory actions against an employee or employees in the jointly managed work force. The burden then shifts to the employer who seeks to escape liability for its joint employer's unlawfully motivated action to show that it neither knew, nor should have known, of the reason for the other employer's action or that, *if* it knew, it took all measures within its power to resist the unlawful action. [FN21]

I find Eddisons and Modern were joint employers of the employees performing the work of the former GCA bargaining unit employees in that they shared and codetermined matters governing essential terms and conditions of employment and they meaningfully affected matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction. Thompsons July 23 proposal to ABCR as to the work Eddisons would perform for ABCR at the MSP Airport was quite detailed. The proposal stated Eddisons will manage on airport shuttling, service agent and off-lot driver work groups at the MSP Airport. It stated Eddisons assigns the following management hierarchy to each account which included a corporate human resources manager who was responsible for recruiting, screening and selection of candidates and in designing a recruitment plan for locations. The organizational

hierarchy included a general manager responsible for scheduling employees, on-site orientation, training, weekly meetings with the client's management staff as well as field audits of performance. The organizational hierarchy included an on-site supervisor for multiple positions shifts for a micro managed work force. It also included a lead position which was defined as seasoned service agent or transporter responsible for on lot van movement and quality control. It stated that Eddisons was required to certify that each supplier employee holds a valid driver's license, has passed a pre-hiring drug test, and has completed the supplier's hiring process which included a satisfactory driving history from the department of motor vehicles and a statewide criminal background check. The proposal included a detailed training program and provisions related to pre-employment drug testing. The proposal included a workplace harassment policy, a safety policy, a substance abuse policy, and a code of conduct for employees.

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On August 30, David McKenna, ABCR director of strategic procurement sent an email to various ABCR officials pertaining to the MSP Airport stating for the first 6 months "after we transition from GCA to Eddisons, we allow them to subcontract at hourly rates for these services" which included shuttling both on and off airport, and service agent work. It stated then after the initial 6 months and for the remainder of the 36 month term Eddisons will perform all services at the following rates, which included shuttling both on and off airport, and service agent work. From McKenna's email, it was clearly in the contemplation between Thompson and ABCR that Eddisons would only contract the work for the initial 6 months of the project and then perform it on their own in lieu of the subcontractor.

Thompson signed a "Staffing Contract" on behalf of Eddisons with Rexroat signing for 25 Modern on August 31. The contract required Modern to perform the direct hiring of employees with specified rates to Eddisons for three job classifications at issue. However based on the contract with Modern as well as what transpired Eddisons played a substantial role in hiring, directing, staffing, setting the working conditions of the employees. The contract between Eddisons and Modern provided that Modern agreed to supply labor and supervision as needed by Eddisons. Eddisons agreed to assist Modern with any general safety and health training 30 necessary to perform the assignment. Eddisons agreed to have an on-site manager to provide training and orientation before the project begins. Modern agreed to submit daily timesheets to Eddisons' supervisor for approval. Modern agreed all employees provided to Eddisons will successfully complete a background record check and drug screening, and have required licensing. If requested, Modern agreed to provide Eddisons copies of the background check, 35 drug screen, and I-9 compliance records. Eddisons agreed to provide any safety or hygiene protection required to perform regular work duties, and pay for required physicals and/or drug screens. The agreement stated that Modern certifies each of its employees holds a valid driver's license, has satisfactorily passed a pre-hiring drug test, and completed Modern's hiring process which includes a satisfactory driving history from the department of motor vehicles and 40 a statewide criminal background check. Modern agreed to maintain a copy of each employee's license and driving history abstract on file for inspection by Eddisons. The agreement stated if Modern became subject to a collective-bargaining agreement Eddisons may terminate its agreement with Modern. Eddisons maintained the right to notify Modern that if Modern's facility 45 manager or any of its employees were not acceptable to Eddisons for any reason Eddisons could request Modern to remove those individuals.

On August 31, Rexroat emailed Thompson that Modern's supervisor Pate would be at the MSP Airport site on September 2. Rexroat asked Thompson, "When can we expect to start having the applicants that you have in your system? We are working all weekend so feel free to call or email." Thus, Rexroat revealed he was expecting Eddisons to be a source of applicants.

Moreover, Eddisons officials played a direct role in the start up of the operations at the MSP Airport. On September 4, Hegidio, Eddisons national operations manager emailed Jordan and told her that he would be visiting her operations September 5 to 7, and sought to introduce himself to Jordan. On September 4, Thompson emailed ABCR Director of Strategic

Procurement McKenna, with a copy to Jordan, stating that one of Eddisons managers has been at MSP Airport training staff since last week, that another one of their regional managers would be in MSP starting tomorrow, and that next week Thompson, their operations director, and two corporate recruiters would be on site all week. The sending of corporate recruiters, despite its contract with Modern, reveals that Eddisons intended and was expected to play a key role in the hiring process, which included bringing in more than 100 new employees in a short period of time. Thus, Eddisons officials were on the ground at the Airport training personnel, managing the start up, and assisting in the recruiting of personnel. By September 12 memo, between ABCR officials Jordan and Jarrett, Jordan discussed the extreme difficulties of the first day of operations and referred to the new staff as "100 new employees for Eddisons". Thus, ABCR who had contracted for the work viewed the drivers and service agents as Eddisons' employees.

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The direct control Eddisons exercised over the employees hired by Modern and on Modern's payroll is exemplified by Thompson's September 15 email to Jordan wherein Thompson stated:

To address some of the issues yesterday we have implemented the following solutions.

- 1. Any service agent without a driver's license has been instructed that under no circumstances are they to move a vehicle. Joe has assigned licensed drivers to make the move to and from the pumps.
- 2. We have directed our staffing partner that we need 30–40 licensed serviced agents by Monday, I was told this morning that they had 20 today coming in for interviews. I was informed the service agents without licenses will be transferred out of ABG operations, all by Monday morning.
- 3. We have sent two of our account managers from other locations to assist Joe with training leads. One arrives tomorrow and the other arrives Monday. They have been directed to stay in MSP until operations become stable.
- 4. Our staffing partner is also still recruiting for the off lot driver positions. I will have an update tomorrow on the exact number and names of the off lot drivers.
- The record contains several more email exchanges between ABCR officials and Eddisons concerning staffing, operational matters, and damage to vehicles. Thus, I find that Eddisons and Modern are or were joint employers of the employees performing the work of the former GCA employees, in that they shared and codetermined matters governing essential terms and conditions of employment and they meaningfully affected matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction. In this regard, Eddisons had contractual authority to engage in such conduct with respect to Modern's employees, and the record reveals it asserted that authority for employees who were on Moderns payroll but supplied to Eddisons to perform its contract with ABCR. See, *Aim Royal Insulation, Inc.* 358 NLRB No. 91 (2012); *In re Bultman Enterprises, Inc.* 332 NLRB 336, 336-337; and *Capitol EMI Music,* 311 NLRB 997, 999 (1993), enfd. 23 F.3d 399 (4th Cir. 1994).

The consolidated complaint alleges that Modern and ISG have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other, have interchanged personnel with each other; have interrelated operations; and have held themselves to the public

as a single integrated enterprise. The complaint alleges that Modern and ISG constitute a single-integrated business enterprise and a single employer within the meaning of the Act. Neither Modern nor ISG filed an answer to the consolidated complaint, and I have found these allegations to be admitted as alleged based on the failure to file an answer. Moreover, the evidence presented reveals that ISG ran a series of ads on Modern's behalf in recruiting employees to replace the former GCA employees. ISG staff answered phone calls in response to these ads, made appointments for interviews, and then directed applicants to sites staffed by Modern personnel, who interviewed and hired employees, and who rejected former GCA employees, based on what I have concluded was their union activities.

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4. The Unlawful Refusal to Hire Former GCA Employees

In Mammoth Coal Co., 358 NLRB No 159, slip op. at 5 (2012), the Board stated:

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Our reasoning in this regard is consistent with Board precedent. As noted above, the Board in *Planned Building Services* reasoned that a discriminatory refusal to hire in a successorship context is analogous to a discriminatory discharge. 347 NLRB at 673. In a discriminatory discharge case, the discriminatees' interest in continued employment is assumed. *R. Sabee Co., LLC*, 351 NLRB 1350, 1351 fn. 7 (2007). Accordingly, we shall not require, as a condition for finding Section 2(3) employee status in a successorship case, an affirmative showing that former employees of the predecessor are genuinely interested in employment with the successor. Instead, we adhere to the Board's central holding in *Planned Building Services*: that, to establish a discriminatory refusal to hire in the successorship context the General Counsel is required *only* ". . . to prove that the employer failed to hire employees of its predecessor and was motivated by antiunion animus." 347 NLRB at 673. [FN17] The judge found, and we agree, that the General Counsel made that showing in this case.

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I find that there is evidence of timing, animus, and direct statements by Respondents' officials that they had been instructed not to hire former GCA employees, who individually and in bulk made attempts to apply for work which were repeatedly rebuffed by Respondents. While Respondents were refusing to hire the experienced staff of GCA employees, they were running ads for their jobs, and they were at the same time having difficulty staffing the operation. They were also receiving repeated and numerous complaints from ABCR about the performance and inexperience of their employees, and the resulting damage to ABCR vehicles. The facts clearly establish the Respondents refused to hire former GCA employees because of their union activities, that all of the Respondents were aware of and participated in this scheme, that they were doing so at ABCR's bidding, and that it was being done because of union animus and to avoid successor bargaining obligations with the Union.

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On February 6, 2012, the Union filed a petition for election with Region 18 to represent a bargaining unit of GCA employees. GCA had been a contractor with ABCR at the MSP Airport facility at issue since June 2010. Yet, on February 14, 2012, ABCR sent an email to Thompson stating they wanted Thompson to bid for the work at Minneapolis "ASAP". The Union won an election with GCA employees and was certified to represent them on March 21. GCA's account for the MSP Airport was subsequently terminated by ABCR, and GCA issued a July 12 WARN notice notifying employees of their impending layoff as of then on September 10, which was changed to September 11. On July 13, then ABCR city manager Jordan wrote an internal memo to another ABCR official concerning the effect of the WARN notice stating that "Tim said to me-'I am pretty sure the employees will stay assuming they will just be brought on by the new company......I did not comment of course. So-I agree-will be interesting." I have viewed this

statement as an admission by Jordan, particularly in light of subsequent events that it was ABCR's intent that the now former GCA employees not be hired. It is also an admission that ABCR and its contractors knew the GCA employees, many of whom in the past went from contractor to contractor, without a hiatus, performing the same work, would want and expect to retain their jobs despite the replacement of GCA as the contractor with ABCR.

The Union learned of the impending termination of the GCA MSP Airport contract upon the Union's receipt of the July 12 Warn notice, and during negotiations with GCA, Union Organizer Slattery was informed that Eddisons was taking over the contract. Slattery understood that Eddisons already had a contract with Hertz to provide services similar to that GCA had been providing with ABCR. On August 14, Slattery went to the Hertz distribution center where he saw an Eddisons posting with its logo on one of the office doors listing Perales as site manager. On August 15, Slattery returned to the Hertz distribution center and spoke to EFS official Oliviares. Slattery asked if they were hiring drivers and service agents, and he was told they were. Slattery requested and received an employment application and was told it was ok if he turned it in later. Slattery later returned to the same location in August and saw a sign posted stating Eddisons interviews for airport driver positions are located in the next building. Slattery subsequently, during this time period, made phone calls to a number listed on Eddisons internet site stating he was looking for a driving job and asked if they were hiring. He was told they were and given Perales number. On August 20, Slattery found an Eddisons ad on line for drivers. Slattery called and spoke to Oliviares who told Slattery it would be ok if Slattery mailed in an application. Yet, when Castro went to the same Eddisons location Slattery had inquired about, shortly after Slattery's call, Oliviares who knew she was a GCA employee, refused to give her a job application, which I have concluded was based on her union status at GCA.

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On August 22 to 25, the Union held contract ratification meetings for its collective-bargaining agreement with GCA. During that time, Slattery passed at applications for Eddisons to GCA employees attending the meetings. Slattery counted 78 applications of which he photographed either the envelope or application or both of 67 employees who had filled out applications during the meetings many of which were mailed to Eddisons from the hotel where the meetings were held. Castro visited Eddisons location at the Hertz distribution center on August 25, where she hand delivered her employment application she had received from Slattery to work for Eddisons directly to Oliviares. Oliviares tried to discourage her by telling her that they were full, and were no longer taking applications. Nevertheless, she left the application with Oliviares. I have concluded again that Oliviares attempted to discourage Castro from applying because he was aware of her pro union status as a GCA employee.

Thompson was informed on August 27 that Eddisons was receiving applications at the Hertz distribution center and he had them forwarded to Eddisons' offices in Atlanta. He testified, in a prehearing affidavit, that he had knew they were applications, did not open them, and had one of his assistants return them to the applicants because Eddisons was not taking applications. I do not credit this explanation as Oliviares at this time gave Slattery, who was not a known union supporter to Oliviares, an application, told him he could take it home and return it. Moreover Eddisons continued to post ads for drivers in early September.

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Rather, an exchange change of emails shows that shortly after August 27, when Thompson became aware that Eddisons was receiving applications from GCA employees, he not only had those applications sent back but he was in touch with Modern to take over the direct hiring duties for the ABCR MSP Airport facility. Thompson sought a subcontractor to do the direct hiring, although Eddisons July 23 proposal to ABCR did not call for the use of subcontractors, but rather had Eddisons performing the complete contract. I do not find

Thompson's pre-hearing explanation of Eddisons use of subcontractors to be very credible. It seems a strange oversight to omit the use of subcontractors from Thompson's initial proposal to ABCR, if the use of subcontractors was routinely used by Eddisons as Thompson claimed in his affidavit. Rather, the multiple company names here suggest a corporate shell game to avoid statutory liability under the Act. For example, within days after the Union's petition for election for the employees of GCA, ABCR solicited a bid from Eddisons for it to perform GCA's contract. ABCR's master agreement for the work was with Eddisons LTD, but Eddisons LTC (referred to herein as Eddisons) assumed that work under a licensing agreement with Eddisons LTD. Thompson testified that he became aware that Eddisons was receiving applications from former GCA employees on August 27, and shortly thereafter, he was in touch with Rexroat for Modern to assume Eddisons hiring of employees to fill the GCA employees' jobs. Then Thompson sent the job applications Eddisons had received back to the GCA employees under the guise that Eddisons was not hiring.

Modern itself, has two names one being Modern Industrial Services, Inc., which signed the contract with Eddisons, and the other Modern Staffing & Security Consultants, Inc. The latter name was used on Pate's business card, although, as set forth above on August 31, Rexroat emailed Thompson that Pate was Modern's supervisor at ABCR's MSP site. Accordingly, based on Rexroat's representation I have found Pate to be a supervisor and agent of Modern, as well as an agent of Eddisons since I have concluded that they are joint employers for the work performed at the MSP Airport site. In furtherance of the ongoing corporate shell game, Modern also used ISG to run ads for replacements of the former GCA employees.

The timing suggests, and I find that Eddisons contacts with Modern was in direct response to the former unionized GCA employees applying to Eddisons for work. This is particularly so since Modern Staffing and Security Consultants touted itself on the internet with the heading of "The Nations Leader in Strike Re-Staffing and Security.!!" The internet ad went on "Our firm has provided services to more strikes in the last 3 years than all of our competitors combined. Modern Staffing & Security, Inc. is the Nation's primary provider of both Re-Staffing and Security. We cover strikes from coast to coast." Similarly, a more current website for Modern, itself, proclaims it is "The leader in strike security and replacement workers." It states, "When a labor union threatens to shut your business down, turn to MIS to keep it running." It states Modern "has worked the three biggest strikes in the past decade." Of course, the Union here had taken not strike vote, and I have concluded it was the intent of the Respondents here to prepare for a labor dispute which they knew they were provoking with their goal of dislodging the GCA bargaining unit by the planned replacement of GCA as a contractor and the replacement contractors unlawful refusal to hire the former GCA employees because of their union activities.

Thus, on August 31, shortly after he was notified that the former GCA employees were filing applications with Eddisons, Thompson signed a contract with Rexroat for Modern to take over the hiring. Yet, Eddisons posted an ad for drivers on line on September 4. Moreover, Rexroat emailed Thompson on August 31 asking for the applicants Eddisons already had in their system. I can only assume in their discussions leading to their contract that Thompson had informed Rexroat that he had been compiling a list of applicants in response to the ads Eddisons had been running and continued to run. Yet, Thompson informed Region 18 by way of affidavit that Eddisons was not hiring as a justification for returning all of the GCA applications Eddisons had received. Based on Slattery's credited testimony, I have concluded there were a large number of GCA employees whose applications had been mailed to Eddisons. When Rexroat asked Thompson for the applications in Eddisons system, I have concluded Thompson did not tender to Modern the GCA employee applications because of their Union activity.

On September 5, the Union sent Thompson a copy of its collective-bargaining agreement with GCA, noting it had a successor provision which it expected Eddisons to adhere to. Thompson admitted to receiving the agreement around September 7, but never responded to the Unions request. On September 7, Castro received her August 25 job application back from Eddisons with the additional handwritten notations on the envelope "GCA" and "main person." Thompson admitted having the applications mailed back, and I have concluded the handwritten notations on the return envelope signified the reason the application was returned, that Thompson was aware Castro was a GCA employee, and more than that she was the main union organizer during the election campaign. I have found the returned notations on the envelope were coercive and violative of Section 8(a)(1) of the Act. The notations on the envelope also signal that Eddisons was aware that Castro was the main union contact and demonstrate that Eddisons was aware of, and keeping tabs of the individual union activities of the employees in the GCA work force.

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Slattery found a series of on line ads for by ISG running from September 2 up until September 25, with various wordings listing the same 800 phone number and advertising for jobs as shuttle drivers, laborers and car cleaners to work at the MSP Airport with no prior experience needed. Some of the ads stated please call now and start tomorrow. On September 8, GCA employee Myers responded to one of the ISG on line ads by placing a phone call, and was told to report the next day at SpringHill Suites Hotel to apply for a job. Receipts for the hotel rooms, show the rooms were being rented by Modern. During his interview for a job while at the hotel, Myers mentioned that he had experience revealing that he worked for GCA. The interviewer, who I have concluded worked for Modern told Myers that they could not take any GCA people. I found this statement was in direct reference to Myers status as a member of the GCA bargaining unit, and violative of Section 8(a)(1) of the Act.

On September 10, Slattery called the ISG 800 number and spoke to Ferruchi asking for a job as an airport driver and Ferruchi directed Slattery to go that day to the same SpringHill Suites were Myers had been rebuffed the day before. The difference was Slattery did not announce he was a former GCA employee. Slattery did not attend the appointment, but he called Ferruchi and told him he could not make it. Slattery gave Ferruchi his phone number.

On September 10 or 11, Castro along with two GCA employees went to the Springhill Suites to apply for work. She saw a posting at the hotel announcing a job fair. Castro was directed by the hotel manager to the conference room where Modern was conducting job interviews. When the interviewer asked if she had any experience, she stated 16 years. During the conversation it came up that she was working for GCA and tomorrow was her last day. When Castro mentioned GCA, the man stated that he could not give her any work as they did not want to hire anyone from GCA. The man refused to give her an application and told her there was an order from Avis not to hire anyone from GCA. The man then forced Castro and her co-workers from the conference room. I have found the man's remarks and physical actions to be violative of Section 8(a)(1). When Castro asked the hotel manager for the name of the company conducting the job fair, she was given Pates business card identifying him as a supervisor for Modern Staffing & Security Consultants. Pate was in the conference room during the exchange between Castro and the interviewer. I have concluded these statements were pursuant to orders from ABCR when they subcontracted the work to Eddisons, and Modern was informed of this by Eddisons when they took on the contract with Eddisons. In this regard, there is no evidence that ABCR had any direct communications with Modern, but only indirectly through Eddisons by way of Thompson. This is also consistent with Thompson's otherwise unexplained returning of the GCA job applications to the GCA employees, rather than him

forwarding the applications to Modern, as Rexroat had requested applications already in the Eddisons system for processing. This solidifies my conclusion that ABCR, Eddisons, Modern, and ISG were all involved in the effort not to hire GCA employees. 10 As to ISG, it appears their role was to run ads, field phone calls and make referrals of applicants. I infer that they were told the reason as to why Modern was not doing this on their own, which was to create multiple layers in the screening process to avoid culpability.

On September 12, the day Eddisons and Modern replaced GCA as ABCR's contract. Jordan wrote an internal memo to ABCR's regional manager stating:

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In all honesty-I don't think we have EVER had a more challenging day. 100 new employees for Eddisons; and not one other than 2 leads knew how to clean a car or get from point A to B. It was truly chaos. Much worse than anticipated! Did not get one car to the auction yard and all of the off-apo drivers got lost several times over.

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However-we had waits/delays/call-ins/gridlock/horn honking all over the place. What a day. Not even close to over.

On September 14, Castro along with a large group of former GCA employees went to

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ABCR's distribution center seeking work. However, no one came out to talk to the employees. Castro called Slattery who arrived at the scene. After Slattery arrived, Jordan came out and saw Slattery was wearing a Teamsters jacket. Jordan told Slattery she would talk to him inside the fence. Slattery told Jordan the people were there to fill out an application for the new contractor. Slattery asked her to identify who the new contractor was. However, Jordan, who had been in direct contact with Thompson who was managing the account for Eddisons, misinformed Slattery by stating she worked for ABCR and she had no relationship with the subcontractor. Slattery asked her who the site manager was for the contractor and she said she did not know. Slattery asked her to give him the site manager for the contractor's phone number and she did not give it to him. Jordan told Slattery that he could leave his name and number with her and she will give it to the new contractor. Slattery gave her his business card. Of course no one from Eddisons or Modern called Slattery. Moreover, Jordan was communicating with Thompson who was listed as Eddisons regional manager and point of contact on Eddisons LTD's contract with ABCR. In fact, on September 4, Thompson sent an email copied to Jordan that he would be at the Longfellow location all week during the week of September 10. Thus, it is likely he was at the location at the time the former GCA employees came to apply for work, but refused to come out.

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It is clear that Jordan, who had made numerous complaints about the inexperienced work force Eddisons had provided the day before, refused to identify the contractor to Slattery, and gave him false information about her contacts with the contractor when he sought that information because of her desire on behalf of ABCR desire to keep the former GCA employees and thereby the Union out of the location. Thus, the former GCA employees, an experienced work force, were prevented from applying for and keeping their former jobs as had been done in the past when contractors were changed at the site. The only difference now was that the GCA employees were represented by a labor organization. In fact, Jordan went one step further, she threatened to call and eventually did call the police to have the GCA workers removed from the premises, rather than allow them to apply to keep their jobs. On September 14, Castro

¹⁰ There is no charge against ABCR covered by this complaint, therefore no findings or conclusions have been made concerning that entity.

circulated a petition to the former GCA employees who came to apply for work that day. It read, "GCA workers press charges for discrimination." It contained 67 signatures.

Later that day, on September 14, Slattery received a call from Ferruchi on Slattery's cell phone. Ferruchi asked if Slattery was still interested in a job and Slattery said he was. Ferruchi called back a few hours later and told Slattery to go, the following day to ABCR distribution center where the former GCA employees who had attempted to apply earlier that day were rebuffed by Jordan and sent away by the police at her request. Slattery was told to ask for a man named Tommy (Pate) to fill out the application. Pate was Modern's site supervisor at the location. Slattery called the employees, including Castro, on the Union's organizing committee and informed them of the information that had been relayed to him by Ferruchi concerning the location and time to apply for work the next day for the new contractor.

On September 15, Castro again tried to apply for work at the ABCR distribution center. 15 Castro met with Pate for an interview. She had previously seen Pate when she went to apply at the SpringHill Suites, but she did not think he recognized her. Castro testified that, after she filled out the application. Pate interviewed her outside in the parking lot. Castro and Pate discussed Castro's work schedule and the type of work he wanted her to do. They discussed Castro's availability since she was working another job, which she had also worked while she worked for GCA. Pate asked Castro if she was ready to start work and she said yes. Pate told 20 her to come tomorrow at 7 a.m. He told Castro she would be paid \$8 an hour and she would be doing service work for Avis. Castro took a photograph of the application she gave to Pate that day. The pre-printed application form reads ISG Industrial Staffing Group. Castro did not list her prior employment with GCA on the application. Just as Pate told Castro her wage rate, the type of work, and starting time, Perales arrived and went into the office. In a matter of minutes 25 Pate was called into the office. Pate then came out and said he was not able to give Castro the job because he had already given it to someone else. Castro testified Perales worked for GCA as a supervisor in the car rental area for Avis. Castro testified she had worked with Perales. I have found Pate's rescinding Castro's job offer to be violative of Section 8(a)(1) of the Act, and it clearly evinces a refusal to hire Castro by the Respondents because of her union activities as 30 part of the GCA staff.

On September 14, when he asked for contact information for the subcontractor to allow the former GCA employees to apply for work, Jordan informed Slattery that she had no relationship with the subcontractor. Yet, on September 15 Thompson emailed Jordan stating:

To address some of the issues yesterday we have implemented the following solutions.

- 1. Any service agent without a driver's license has been instructed that under no circumstances are they to move a vehicle. Joe has assigned licensed drivers to make the move to and from the pumps.
- 2. We have directed our staffing partner that we need 30–40 licensed serviced agents by Monday, I was told this morning that they had 20 today coming in for interviews. I was informed the service agents without licenses will be transferred out of ABG operations, all by Monday morning.
- 3. We have sent two of our account managers from other locations to assist Joe with training leads. One arrives tomorrow and the other arrives Monday. They have been directed to stay in MSP until operations become stable.
- 4. Our staffing partner is also still recruiting for the off lot driver positions. I will have an update tomorrow on the exact number and names of the off lot drivers.

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Thus, at the time they turned the GCA employees away on September 14, Eddisons and Modern were still recruiting and needed service agents and at a minimum offsite drivers.

On September 16, Beckles, who had worked for GCA as an onsite driver went to ABCR's distribution center to apply for a job. He was told to come back the next day and ask a man who would be wearing a black shirt and black pants for an application. Beckles returned on September 17, and the man in the black shirt told Beckles he had to go on line to get an application. Beckles asked how to go on line and was told there was an 800 number. The man refused to give him the number, but told him to go on the website. When he went outside, Beckles met another man who gave him the 800 number. Beckles called the number and was told to go to a hotel in Bloomington on Monday morning, which would have been September 17. Beckles went to the hotel and saw the same man who he saw earlier that morning, who he described as bald with a goatee. Beckles said he came to fill out an application. There were three people filling out an application and the man gave Beckles one. Beckles heard the man hire a couple of people. When he finished talking to the other applicants, he took Beckles' application and asked him to step outside. When they were outside, the man looked at Beckles application and said "You worked for GCA?" Beckles said, "Yes." The man said you were laid off last Wednesday and Beckles said it was Tuesday. The man then said, "I don't have anything opening right now." The man told Beckles he would call him in three days and Beckles thanked him. The man asked Beckles how he got the number and Beckles said one of your employees gave it to him. The man asked the employee's name and Beckles said he did not know. Beckles testified the man never called. I found, as alleged in the complaint that the man's questioning of Beckles as to where he previously worked, and how he found out how to apply compounded with the man's refusal to hire Beckles, while he was hiring others was coercive and could only be reasonably related to Beckles having previously worked for GCA subcontractor. I found this questioning of Beckles to be violative of Section 8(a)(1) of the Act.

By email dated September 18 to Eddisons Official Hegidio and copied to Thompson, Jordan stated:

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I think Joe has underestimated the "few shuttlers short" in the morning. You had your off-apo team driving to the airport until 2:00 pm which in turn prevented us from picking up the cars and the local market and moving enough cars to the auction. Please don't cut labor on our busiest day of the week. It was truly an absolute failure all the way around in service. The ready lines are not full this morning but I know that Joe did the best he could.

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By email dated September 18, Jayne Spado of ABCR wrote to Peyta Atkins, Finance Specialist for Eddisons concerning vehicle damage. Spado stated there were quite a few vehicles fixed in the shop pertaining to tires and mirrors. Spado stated, "I believe much of this damage can be avoided by some simple carwash training if you are interested in passing that along. Almost all of this damage to the right front fenders." On the morning of September 19, Spado emailed Jordan stating, "We will have to keep on them. I have a lot full of new damage this morning." On September 23, ABCR Manager Ali Elm wrote of continuing problems with Eddisons performance including: drivers with poor manners cutting off customers; drivers using id badges that did not belong to them; drivers with no id badges; drivers bringing dirty cars to the ready line; and exterior cleanliness of the cars being an issue. By email dated September 27, ABCR official Jeff Carlson wrote to Hegidio that "Body damage/tire damage. The amount we've seen thus far and the amount we continue to see is astronomical." On October 11, Jordan wrote Thompson asking for a plan to improve the quality of the vehicles at MSP. She stated, "We have done over 150 quality audits since Monday and less than 50% of all cars

passed our QA standards...." Jordan sent a separate email to Thompson and Hegidio on October 11 detailing several specific performance complaints. On October 12, Jordan emailed Thompson complaining about the quality of accident reports and stating, "The cars are just 'showing'up with damage all over the place. Please..... Need help."

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Thus, the performance and other complaints continued from ABCR to Eddisons on into October, most largely related failure in service, damage to vehicles, quality of cleaning the vehicles, the picking up of cars, and basically all as a result of the inexperience and lack of training of the newly hired employees. On September 17, the Union filed unfair labor practice charges against Eddisons, Modern, and ISG for the refusal to hire the former GCA employees: yet they still were not hired. I have concluded there is evidence of animus in the form of statements made by Modern officials to the GCA applicants; in Thompson mailing the applications back to the GCA applicants, with the handwritten notations on Castro's application "GCA" and "main person", to the offering and then rescinding a job offer to Castro when a former GCA supervisor arrived at the scene of the job interview, and by Jordan's refusal to give Slattery the contact information for the GCA applicants to apply. I have concluded the evidence reveals that all three Respondents were aware of and participated in the scheme not to hire former GCA employees which was done at the behest of ABCR, and it was done to prevent the Union's right of recognition with GCA from transferring to the new contractor. Respondents did not show up for hearing, did not file briefs, and have put on no defense to their conduct in refusing to hire the former GCA employees which I find was violative of Section 8(a)(1) and (3) of the Act.

It should be noted that former GCA off-site driver Bill Hansen testified he was laid off from GCA in September and that a week after the layoff he was solicited to apply for work with the new contractor, which he did at that time. Hansen's testimony reveals he was hired as an off-site driver, without an interview. 11 Hansen testified he was hired with about seven or eight other former GCA off-site drivers and began work the day they applied as off-site drivers. Hansen testified the work staved the same between the work he performed for GCA and the new company. He testified nothing changed and he has done the same job for five years. Hansen testified he received no 401(k) plan for the new company, no paid vacation, and no personal days, although those are benefits in the Union's collective-bargaining agreement with GCA. Hansen testified he did not receive any benefits at the new company and he received no wage increase, although a wage increase was called for during the term of the collectivebargaining agreement. I do not find the delayed hiring of a few off-site drivers from a prior work force of about 160 employees exonerates Respondent's behavior to the remainder of the employees in the GCA bargaining unit. In this regard, Jordan's emails indicate Respondent's were having a particularly difficult time recruiting off-site drivers, with her September 14 memo stating those hired were getting lost. Thompson responded by email of September 15, that Modern was still recruiting off-site drivers, and by email of September 18, Jordan was still complaining to Thompson about the performance, or lack thereof of those hired. I find that the week long delay in offering the few off-site drivers work following their layoff was because Respondents were desperately trying to staff the facility without hiring any GCA employees, and it was only when these attempts failed did they offer employment to a few off-site drivers. To any calculation, the hiring of this few employees would not have given the Union recognitional

¹¹ During his testimony, Hansen was shown an earnings statement for period ending October 28, 2012. Hansen had little recollection of the document but testified it had his name and social security number on it. The name of the company listed on the earnings statement is MIS Staffing and Security Consultant. The address listed on the statement for MIS is the Fort Myers, Florida address listed for Modern on its staffing contract with Eddisons.

rights if Respondents' scheme to not hire the other former GCA employees succeeded. I therefore find that the belated hiring of Hansen and a few other off-site does not exonerate Respondents from their refusal to accept applications from and hire the other former GCA employees. See, *Mammoth Coal*, 358 NLRB No. 159, slip op. at 2 (2012); and *American Press*, 280 NLRB 937, 939 (1986), enfd. 833 F.2d 621 (6th Cir. 1987) where successor employers were found to have unlawfully refused to hire predecessors employees, although the successor employers did hire a small number of employees from the predecessors work force. Moreover, Slattery testified the large majority of off-site drivers were opposed to the Union during the organizing campaign. He testified only around two or three off-site drivers signed union authorization cards. He testified there were about 30 off-site drivers and the overall unit was 165 employees according to the Excelsior list. Since Respondents were aware of Castro's status as one of the leading union adherents when they marked and returned her job application as "main person", I have concluded they were keeping track of the union activities of their predecessors employees, and I have imputed to them the knowledge of the off-site drivers group opposition to the Union when they hired these few employees.

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5. The Respondents Unlawful Refusal to Bargain

There is a presumption that a union's majority status continues when a successor employer refuses to hire a predecessor's employees for reasons violative of the Act. See, *Daufuske Island Club & Resort*, 328 NLRB 415, 422 (1999), enfd. 221 F.3d 196 (D.C. Cir. 2000); and *Planned Building Services*, 347 NLRB 670, 674 (2006). Respondents were clearly successor employers to the work performed by GCA. They contracted with the same client ABCR as did GCA, there was no hiatus in operations, they performed the same work at the same location as did GCA, and advertised for and hired the same job classifications as in the GCA bargaining unit. ABCR official Weber testified the work did not change between Respondents and GCA, as did former GCA employee Hansen who was hired by Respondents.

Since the Respondents unlawfully refused to hire GCA's employees, they lost the right to 30 set the initial terms and conditions of employment for the employees they did hire. See, Pace Industries, Inc., v. NLRB, 118 F.3d 585, 593-94 (8th Cir. 1997); Planned Building Services, 347 NLRB 670, 674 (2006); and State Distributing Co., 282 NLRB 1048 (1987). Any remedy should also apply to Respondent's employees who were hired in lieu of the successor's employees in terms of the loss of the Union's contractual benefits. In the instant case, the Union forwarded 35 Eddisons a copy of its collective-bargaining agreement prior to the time Eddisons took over as subcontractor. Eddisons was informed the agreement had a successor provision and it was the Union's view that the terms of the agreement should be honored for the employees Eddisons was going to hire when it took over the contract. However, Hansen's testimony revealed the fringe benefit provisions of the agreement were not applied, and he did not receive the 40 contractually required wage increase. Accordingly, I find Respondents violated Section 8(a)(1) and (5) of the Act by the failure to recognize and bargain with the Union as the collectivebargaining representative of the employees performing the bargaining unit work of the former GCA employees, and by unilaterally setting terms and conditions of employment that varied from those set forth in the Union's collective-bargaining agreement with GCA when 45 Respondents took over the contract with ABCR.

¹² Thompson's ordering the return of former GCA employee applications, along with repeated statements of Modern officials that they would not hire former GCA employees renders any argument that a particular employee did not apply for work as lacking merit. This record establishes it would have been a futility for them to have done so.

CONCLUSIONS OF LAW

- 1. The Respondents Eddisons Facility Services LLC (Eddisons), Modern Industrial Services, Inc., (Modern), and ISG Industrial Staffing Group, Inc., (ISG) are each employers within the meaning of Section 2(2), (6) and (7) of the Act.
 - 2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
- 3. Modern and ISG are single employers under the Act; and have acted as joint employers with Eddisons, and as agents of one another, concerning the hiring and employment of employees to perform work for Avis Budget Car Rental LLC (ABCR) at the Minneapolis St. Paul International Airport (MSP Airport) beginning in August 2012.
- 4. The officials of Modern, ISG, and Eddisons including Robert Thompson, Bernie Oliviares, Thomas Pate, Bryan Rexroat, James Rexroat, and Irina Shtarkman have acted as agents for all three entities concerning the hiring and employment of employees to perform work for ABCR at MSP Airport beginning in August 2012.
 - 5. Modern, ISG and Eddisons have violated Section 8(a)(1) of the Act by:
- (a) Coercively interrogating job applicants about the circumstances surrounding their applications for employment because of their union affiliation or support.
- (b) Coercively physically removing job applicants from a hiring event because of the applicants' union affiliation or support.
- (c) Informing applicants they will not be hired, and Respondents were instructed by Avis that they not be hired because of their union affiliation or support, as former employees of GCA Production Services, Inc. (GCA).
- (d) Returning job applications to employees and labeling the return envelope to one applicant GCA and main supporter in reference to her union activities as a GCA employee.
- (e) Informing employees that their job offer had been rescinded because of their union affiliation or support as former employees of GCA.
- 6. Since March 21, 2012, based on a Board certification of representative issued on that date, the Union has been and is the exclusive collective-bargaining representative by virtue of Section 9(b) of the Act for purposes of rates of pay, wages, hours of employment, and other terms and conditions of employment for employees in the following appropriate unit:

All full-time and regular part-time drivers, vehicle service agents, and leads employed at or out of the Avis Budget Group (ABCR) facility located at 7542 Longfellow Avenue, South, Minneapolis, Minnesota; excluding office clerical employees, managerial employees and guards and supervisors as defined in the Act.

- 7. By refusing in August and on and after September 12, 2012, to hire or delaying in the hiring of employees formerly employed by GCA because those employees were represented by the Union, and in order to avoid recognition of and bargaining with the Union, Respondents have violated Section 8(a)(1) and (3) of the Act.
- 8. By refusing on and after September 12, 2012, to recognize and bargain with the Union as the collective-bargaining representative of its employees employed in the aforesaid unit, Respondents have violated Section 8(a)(1) and (5) of the Act.
- 9. By on and after September 12, 2012, unilaterally changing the preexisting conditions of employment of its bargaining unit employees, as reflected in the Union's collective-bargaining agreement with GCA, without prior notification to and bargaining with the Union, Respondents have violated Section 8(a)(1) and (5) of the Act.

The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

10. Except as specifically found here, Respondents have not violated the Act as alleged in the consolidated complaint.

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THE REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I shall recommend they be ordered to cease and desist and take certain affirmative action designed to effectuate the policies of the Act. I shall also recommend that they be held jointly and severally liable for all claims resulting from the unfair labor practices found here.

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This case presents the rather unique circumstance where the three Respondents did not show up at the trial, and Eddisons in particular also failed to produce certain subpoenaed documents. Nevertheless, counsel for Acting General Counsel moved to amend the consolidated complaint at the hearing to only seek a remedy for the period of September 12. 2012 to November 4, 2012, for alleged Section 8(a)(1),(3), and (5) allegations of the Act. I assume this was based on the conclusion that the Respondents ceased operating at the facility in question as of November 4, 2012, and were replaced by some other entity. While I granted the request to amend at the time, since it was unopposed by the Union, I have reconsidered and have decided to deny the amendment. First, there was no concrete evidence presented as to if and when any of the Respondents ceased operations, and since the Respondents failed to appear there could not be. Second, Weber, an ABCR official who was in charge of the MSP Airport location, testified at the trial that Eddisons was still performing the contract for ABCR at the time of the trial, which took place in June 2013. Weber did not know the full name of the Eddisons entity that was performing the contract, but his testimony certainly lays some doubt to the conclusion that Eddisons, or any of the Respondents should be left off the hook for their actions at the expense of the Union and the wronged employees without firm proof that they supply, at a hearing, if necessary. Third, the actual contract between ABCR and Eddisons to begin performing the work was with Eddisons LTD, not Eddisons LTC which has been alleged as a Respondent here. Eddisons LTC conceded in its answer that it was performing the work at issue through a licensing agreement with Eddisons LTD, to which Thompson also testified to the same in his pre-hearing affidavit, and I have found Respondent Eddisons LTC is liable. However, the statement of requisition produced at the hearing by ABCR, and signed by its officials for the work to begin on September 12, 2012, is between ABCR and Eddisons LTD. It specifically lists Eddisons LTD as the supplier of services with Thompson listed as the supplier's regional manager and point of contact in the agreement. There appears to be a strong relationship between Thompson and Eddisons LTD separate and apart from the licensing agreement since Thompson is listed as regional manager in Eddisons LTD's contract with ABCR which raises the inference that in its contract Eddisons LTD designated Thompson as its agent for Eddisons LTD's dealings with ABCR. 13

Moreover, this record leaves a strong odor of corporate gamesmanship with an ever passing hand and moving target to avoid liability under the Act. I therefore rescind my prior approval to amend the complaint and limit the liability period as requested by counsel for the Acting General Counsel since no proof was presented other than out of hearing statements that liability should end, and if so when. Moreover, the Board's remedy requires unfair labor practices to be remedied by successors and assigns, which very well may be applicable here

¹³ Eddisons LTD has not been alleged as a respondent here, and I make no finding that it has committed any unfair labor practices, as its conduct is not at issue before me. However, Eddisons LTD may still be alleged as a successor to the Respondents, if appropriate, in a compliance proceeding. Its status as a successor employer, and any ensuing liability that may be derived there from, may be litigated at the compliance proceeding during which Eddisons LTD's due process rights will be safe guarded. See, *2 Sisters Food Group, Inc.,* 359 NLRB No. 158, slip op. at 1 fn. 2 (2013).

even assuming that only Eddisons LTD is the remaining employing entity, or one of the remaining entities left to operate the contract with ABCR. I point out that no party can point to prejudice by my altering my decision and now rejecting the amendment limiting liability. In this regard, none of the Respondents attended the hearing or filed briefs, so they cannot claim they relied on the ruling which was only made at the hearing. Moreover, they will have an opportunity to prove their liability ended and when at a compliance proceeding, if that proves to be necessary. As a result, I am recommending a full and ongoing remedial order, with the burden on Respondents to prove if and when it should end, and to determine as well as if there are any successors or assigns that should assume responsibility under the Act.

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I shall recommend Respondents be ordered to restore the status quo ante by reinstating the wages, benefits, and terms and conditions of employment set forth in the Union's collectivebargaining agreement with GCA for employees who began working on or after September 12, 2012, and make employees whole who were hired and/or who Respondents unlawfully refused to hire based on the terms of that collective-bargaining agreement. Additionally, Respondents shall be required to offer instatement to and make whole the applicants listed in paragraph 6(c) of the consolidated complaint and as well as any other former GCA bargaining unit employees who were on GCA's payroll during the weeks of September 3 or 10, 2012, who Respondents failed to hire or delayed in hiring, to their former positions with GCA, restoring their former benefits and seniority, terminating if necessary any employees occupying those positions.¹⁴ The make-whole remedy shall be computed in accordance with Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), compounded daily as prescribed in Kentucky River Medical Center, 356 NLRB No. 8 (2010). In addition, the decision in Latino Express, Inc., 359 NLRB No. 44 (2012), shall be applied by Respondents in compensating affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and the filing of a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended. 15

ORDER

A. Pursuant to Section 10(c) of the National Labor Relations Act, it is hereby ordered that Respondents Eddisons Facility Services LLC (Eddisons), ISG Industrial Staffing Group, Inc. (ISG) and Modern Industrial Services, Inc. (Modern), their officers, agents, successors, and assigns, shall

¹⁴ The consolidated complaint does not include a delay in hiring the former GCA employees, however, I have concluded such an allegation is part and parcel of the refusal to hire. There is testimony on this record that when ABCR changed contractors in the past the employees just went on to the new contractor without any break in employment. However, here Respondents demonstrated an unlawful fixed intent not to hire the former GCA employees. The fact that they may have hired some of those employees later on due to business necessity outstripping their anti-union motive does not remedy the fact that those employees such as Hansen who were belatedly hired still lost time at work due to Respondents unfair labor practices.

¹⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from

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Castro, Laura

- (a) Coercively interrogating job applicants about the circumstances surrounding their applications for employment because of their union affiliation or support.
- (b) Physically removing job applicants from a hiring event because of the applicants' union affiliation or support.
- (c) Informing applicants they will not be hired because of their union affiliation or support because of their status as former employees of GCA Production Services, Inc. (GCA).
- (d) Returning job applications to applicants and labeling the return envelope GCA and main supporter because of the employee's union activities as a GCA employee.
- (e) Informing employees that their job offer had been rescinded because of their union affiliation or support as former employees of GCA.
- (f) Refusing to hire or delaying in the hiring of applicants and employees formerly employed by GCA because those employees were represented by Teamsters Local No. 120, (the Union), and in order to avoid recognition of and bargaining with the Union.
- (g) Refusing to recognize and bargain with the Union as the collective-bargaining representative of their employees employed in the following bargaining unit appropriate for collective-bargaining:

All full-time and regular part-time drivers, vehicle service agents, and leads employed at or out of the Avis Budget Group (ABCR) facility located at 7542 Longfellow Avenue, South, Minneapolis, Minnesota; excluding office clerical employees, managerial employees and guards and supervisors as defined in the Act.

- (h) Unilaterally changing the preexisting conditions of employment of bargaining unit employees, as reflected in the Union's collective-bargaining agreement with GCA, without prior notification to and bargaining with the Union.
- (i) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act
- (a) Offer, in writing, to the extent that Respondents have not already done so, immediate and full instatement to all employee applicants named below to the positions they held with the predecessor or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed while working for its predecessor, and make them, as well as any other former GCA Production Services, Inc. (GCA) bargaining unit employees who were on GCA's payroll during the weeks of September 3 or 10, 2012, who Respondents failed to hire on September 12, 2012, whole for any loss of earnings and other benefits suffered as a result of the discrimination against them as described in the remedy section of this decision, discharging, if necessary, the persons hired into bargaining unit positions who had not previously worked for GCA in the GCA bargaining unit. With reinstatement offers, Respondents shall notify these individuals that it will recognize and bargain with the Union as their exclusive representative.

Abdi, Hajia	Abdi, Ali	Abdi, Omar	Abdiladif, Ahmed
Abdirashid, Deeq	Abdow, Aweis	Abdulahi, Hikmet	Abdulahi, Bashir
Abdullahi, Jama	Abdullahi, Hassan	Abdullahi, Fartun	Abdulle, Jihan
Abreham, Eyob	Aden, Mohamed	Ahmed, Deeq	Ahmed, Mohamed
Ahmed, Abdirizak	Ahmed, Zahra	Ahmed, Abdulkadir	Ahmednoor, Abdinasir
Ali, Safiyo	Ali, Osman	Ali, Maryan	Ali, Munira
Alvarado, Anayancy	Anderson, Jeffrey	Arale, Maulid	Araya, Berhan
Ashnefe, Tesfahun	Askar, Cabdiweli	Asmerom, Michael	Awad, Abdirashid
Awad, Halimo	Awad, Mohamed	Awatt, Odan	Beckles, Ronald
Bitsuamlak, Ghenet	Boadu, Andrew	Bonfil, Gilberto	Carlson, David

Chacon, Jaime

Chang, Zeng

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Cha, Fong

Comstock, Christopher	Dau, Yai	Davis, Eula	Davis, Louis	
Demelash, Atsede	Demissei, Bereket	Desse, Tekle	Desta, Asfaw	
Dhoobey, Deega	Diriye, Ayan	Duerkop, Laverne	Dush, Charles	
Elmi, Ibrahim	Engida, Tesfaye	Eriksen, Harald	Farah, Abdi	
Farah, Bashi	Farah, Shugri	Flores, Remedios	Freemark, DeLois	
Freemark, Peter	Fromssa, Yohannes	Frye, Terry	Games, Tewodros	
Gebrezgi, Assefa	Getman, Todd	Ghalib, Abdirizak	Giancola, Nicholas	
Gonzalez, Jose	Greethurst, Dean	Hailu, Daniel	Hansen, William	
Hanson, Denyse	Hashi, Hajir	Hassan, Said	Hassan, Mukhtar	
Hassan, Jibril	Hassan, Mohamed	Her, Chang	Hernandez, Ismael	
Huisenga, Douglas	Ibarra-Sosa, Yadira	Ibrahim, Hassan	Ibrahim, Sahal	
Ibrahim, Dega	Ismail, Amal	Isse, Mohamed	Isse, Said	
Isse, Ahmed	Isse, Yusuf	Jama, Safi	Jimenez Lezama, Fabiola	
Juarez, Antonino	Juma, Shukri	Kassa, Kidsty	Kassa, Shumet	
Klaesges, Daniel	Klein, Andrew	Krech, Eugene	Lahr, Theodore	
Lee, Vichai	Lee, Thong	Lezama, Oscar	Lopez Sanchez, Eduardo	
Maalin, Kadra	Martin, Shannon	Maskel, Ashley	Mathson, Robert	
Mausolf, John	Mebrahtu, Abraham	Medina, Edgar	Melsaw, Dereje	
Michel, Janice	Mielke, Kenneth	Milki, Yirgalem	Miranda Guzman, Rosa	
Mohamed, Abase	Mohamed, Mohamed	Mohamed, Sharif	Mohamed, Nasra	
Mohamed, Dhoofo	Mohamed, Fardowsa	Mohamed, Abdirisak	Mohamed, Amran	
Mohamed, Jama	Mohamed, Hibo	Mohamed, Fowsiyo	Mohamed, Shukri	
Mohamed, Awil	Mohamed, Hassan	Mohammed, Abdullah	Muluneh, Hanna	
Myers, John	Najera, Leopoldina	Narvaez, Jose	Noor, Aden	
Nor, Abdiwadi	Nor, Ibrahim	Norstad, Orlando	Nur, Fadumo	
Nur, Aden	O'Leary, James	Ohmann, Dale	Omar, Taju	
Omar, Barkhad	Omar, İbrahim	Omar, Abdelrahman	Omar, Abdulkadir	
Omar, Nasro	Panek, Thomas	Pavon, Oscar	Perez, Emma	
Ramirez, Lazaro	Refu, Frenywet	Restivo, Michael	Rios, Jorge	
Roble, Liban	Said, Sagal	Said, Abdihakim	Salad, Farhan	
Saliya, Nedu	Samatar, Fadumo	Sandoval-Mejia, Jose	Sanisaca, Manuel	
Sarkela, Richard	Schreiber, Bonnie	Sedoro, Mulugeta	Serna, Pablo	
Sherburne, Keith	Shire, Abdirahman	Sigar, Ibrahim	Silva, Enrique	
Simmons, Francis	Smith, Craig	Tahiro, Abdulhakim	Tekleab, Alazar	
Tesfaye, Minilik	Thao, Yang	Thomas, Carlos	Thomas, Terri	
Torres, Angel Antonio	Townsend, Candice	Triplett, Franklin	Tugutchi, Eugeniu	
Ugas, Faisa	Vang, Cha Xiong	Vang, Ge	Vang, Tou	
Vang, Chue	Vang, Chong	Vang, Pao	Wahab Badal, Abdi	
Wali, Sahra	Walli, Abdifatah	Wardere, Safia	Warsame, Abdi	
Weber, Philip	White, Odis	Woldeyes, Yoseph	Workenhe, Endale	
Worku, Eyob	Xiong, Xai	Xiong, Tou	Xiong, Wa	
Xiong, Blia	Xiong, Moua	Yang, Kha	Yang, Nhia	
Yang, Vang	Yang, Eng	Yenew, Alemtsehay	Yeshitla, Samson	
Yusuf, Mustaf	Yusuf, Osman	Zabinski, Gerald		

⁽b) Remove from Respondents files any reference to the unlawful refusal to hire or the delay in hiring the above-named or described unit employees, and notify these employees in writing that this has been done and that this unlawful conduct will not be used against them in any way.

(c) On request, bargain with the Teamsters Local No. 120 as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

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- All full-time and regular part-time drivers, vehicle service agents, and leads employed at or out of the Avis Budget Group (ABCR) facility located at 7542 Longfellow Avenue, South, Minneapolis, Minnesota; excluding office clerical employees, managerial employees and guards and supervisors as defined in the Act.
- (d) On request of the Union, rescind the unilateral changes in the unit employees' wages, hours, and working conditions implemented and restore the benefits listed in the collective-bargaining agreement between the Union and GCA and make whole affected employees, including those whose employment is directed above, with respect to collective-bargaining agreement wages and benefits for any and all losses they incurred by virtue of the unilateral changes to their wages, fringe benefits, and other terms and conditions of employment from the initial hire of unit employees on September 12, 2012, and thereafter, until Respondents negotiate in good faith with the Union to agreement or to impasse. This order applies to both former GCA employees and employees who were hired in their stead in terms of the make whole remedy for the failure to pay wages and offer benefits as required by the described collective-bargaining agreement.
- (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay and/or other compensation due under the terms of this Order.
- (f) Within 14 days after service by the Region, post at its facilities in Minneapolis, Minnesota, where bargaining unit employees are employed or visit as part of their employment, copies of the attached notice marked Appendix. 16 Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondents' authorized representatives, shall be posted by Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if any of the Respondents customarily communicate with its employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondents, jointly or individually, have gone out of business, or have ceased doing business at the facility involved in these proceedings, the company or companies as applicable shall each duplicate and mail, at their own expense, a copy of the notice to all current or former bargaining unit employees employed by said company or companies as single or joint employers at the described facilities, as well as to those who pursuant to the this order were or should have been employed out of the Minneapolis, Minnesota location at any time since September 12, 2012.
- (g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that each Respondent acting individually, and as a group, have taken to comply.

¹⁶ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Dated, Washington, D.C., September 18, 201
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5 Eric M. Fine Administrative Law Judge

APPENDIX NOTICE TO EMPLOYEES Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities.

WE WILL NOT coercively interrogate job applicants about the circumstances surrounding their applications for employment because of their union affiliation or support.

WE WILL NOT physically remove job applicants from a hiring event because of the applicant's union affiliation or support.

WE WILL NOT inform applicants they will not be hired because of their union affiliation or support, as former employees of GCA Production Services, Inc. (GCA), or that we are under instructions by Avis not to hire them.

WE WILL NOT return job applications to applicants and label the return envelope "GCA" and "main supporter" because of the employee's union activities as a GCA employee.

WE WILL NOT inform applicants and/or employees that their job offer has been rescinded because of their union affiliation or support as a former employee of GCA.

WE WILL NOT refuse to hire or delay in the hiring of employees formerly employed by GCA because those employees were represented by the Teamsters Local No. 120 (the Union), and in order to avoid recognition of and bargaining with the Union.

WE WILL NOT refuse to recognize and bargain with the Union as the collectivebargaining representative of our employees employed in the following bargaining unit appropriate for collective-bargaining:

All full-time and regular part-time drivers, vehicle service agents, and leads employed at or out of the Avis Budget Group facility located at 7542 Longfellow Avenue, South, Minneapolis, Minnesota; excluding office clerical employees, managerial employees and guards and supervisors as defined in the Act.

WE WILL NOT unilaterally change the preexisting conditions of employment of bargaining unit employees, as reflected in the Union's collective-bargaining agreement with GCA, without prior notification to and bargaining with the Union.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL offer, in writing, to the extent that we have not already done so, immediate and full instatement to all former GCA employee applicants named or described in the Board's decision to the positions they held with the GCA or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed while working for GCA, and make whole any applicants who were not hired, or employees whose hiring was delayed, for any loss of earnings and other benefits suffered as a result of the discrimination against them as described in the remedy section of the Board's decision, discharging, if necessary, the persons hired into bargaining unit positions who had not

previously worked for GCA. With the instatement offers, we will notify these individuals that we will recognize and bargain with the Union as their exclusive representative.

WE WILL remove from our files any reference to the unlawful refusal to hire, or delay in hiring the above described unit employees, and notify these employees in writing that this has been done and that this unlawful conduct will not be used against them in any way.

WE WILL on request, bargain with the Teamsters Local No. 120 as the exclusive representative of the employees in the above-described appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL on request of the Union, rescind the unilateral changes in the unit employees' wages, hours, and working conditions implemented and restore the benefits listed in the collective-bargaining agreement between the Union and GCA and make whole affected employees, including those whose employment is directed above, for any and all losses they incurred by virtue of the unilateral changes to their wages, fringe benefits, and other terms and conditions of employment from the initial hire of unit employees in September 12, 2012, and thereafter, until we negotiate in good faith with the Union to agreement or to impasse, in the manner set forth in the remedy section of this decision. This order applies to both former GCA employees and employees who were hired in their stead in terms of the make whole remedy for the failure to pay wages and offer benefits as required by the described collective-bargaining agreement.

		ISG INDUSTRIAL STAFFING GROUP, MODERN INDUSTRIAL SERVICES, AND EDDISONS FACILITY SERVICES LLC, SINGLE AND JOINT EMPLOYERS		
	<u> </u>	(Employer)		
Dated	Ву			
		(Representative)	(Title)	

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website:

www.nlrb.gov.

Towle Building, Suite 790, 330 Second Avenue South, Minneapolis, MN 55401-2221 (612) 348-1757, Hours: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF
POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER
MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS
PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE
OFFICER, (612) 348-1770.